

JOHN HUPALO VOLUME I
GOLDEN vs NAT L COLLEGIATE STUDENT LOAN

November 19, 2019

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<p>1 VOLUME: I</p> <p>2 PAGES: 124</p> <p>3 EXHIBITS: 8</p> <p>4 UNITED STATES BANKRUPTCY COURT</p> <p>5 EASTERN DISTRICT OF NEW YORK</p> <p>6 CASE NO. 16-40809-ess</p> <p>7</p> <p>8 In Re: Tashanna B. Golden f/k/a</p> <p>9 Tashanna B. Pearson,</p> <p>10 Debtor</p> <p>11 Tashanna B. Golden f/k/a</p> <p>12 Tashanna B. Pearson</p> <p>13 Plaintiff</p> <p>14 vs.</p> <p>15 Nat'l Collegiate Student Loan</p> <p>16 Trust 2005-3, et al.</p> <p>17 Defendants</p> <p>18</p> <p>19 DEPOSITION OF JOHN HUPALO, a witness called on</p> <p>20 behalf of the Debtor in the above-entitled cause,</p> <p>21 taken before Laura Naylor, Notary Public in and for</p> <p>22 the Commonwealth of Massachusetts, at One Lincoln</p> <p>23 Street, Boston, Massachusetts, on Tuesday, November</p> <p>24 19, 2018, commencing at 1:06 p.m.</p>	<p>1 Appearances, Cont.</p> <p>2</p> <p>3 David Fialkow, Esquire</p> <p>4 K&L GATES, LLP</p> <p>5 State Street Financial Center</p> <p>6 One Lincoln Street</p> <p>7 Boston, MA 02111</p> <p>8 (617) 261-3126</p> <p>9 Counsel on behalf of Witness, John Hupalo</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 Appearances:</p> <p>2 Peter N. Freiberg, Esquire</p> <p>3 JONES SWANSON HUDDALL & GARRISON</p> <p>4 601 Poydras Street, Suite 2655</p> <p>5 New Orleans, Louisiana 70130</p> <p>6 (504) 523-2500</p> <p>7 Counsel on behalf of the Plaintiff</p> <p>8 Tashanna B. Golden f/k/a Tashanna B. Pearson</p> <p>9</p> <p>10 Christopher Fontenelli, Esquire</p> <p>11 LOCKE LORD, LLP</p> <p>12 Brookfield Place</p> <p>13 200 Vesey Street, 20th Floor</p> <p>14 New York, NY 10281</p> <p>15 (212) 912-2730</p> <p>16 Counsel on behalf of the Defendants</p> <p>17 Nat'l Collegiate Student Loan</p> <p>18 Trust 2005-3, et al.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 INDEX</p> <p>2 WITNESS DIRECT CROSS REDIRECT RECROSS</p> <p>3 JOHN HUPALO</p> <p>4 By Mr. Freiberg 5</p> <p>5 By Mr. Fontinelli 119</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 No. Description Page</p> <p>9 Exhibit No. 1, Term Sheet, marked for 52</p> <p>10 identification</p> <p>11 Exhibit No. 2, Form 10D, marked for 64</p> <p>12 identification</p> <p>13 Exhibit No. 3, Master Loan Guaranty Agreement, 76</p> <p>14 First Marblehead Corporation and Education</p> <p>15 Resources, Inc., marked for identification</p> <p>16 Exhibit No. 4, Database Sale and Supplementation 76</p> <p>17 Agreement, marked for identification</p> <p>18 Exhibit No. 5, Marketing Services Agreement, 77</p> <p>19 marked for identification</p> <p>20 Exhibit No. 6, Master Service Agreement, TERI and 77</p> <p>21 First Marblehead Corporation, marked for</p> <p>22 identification</p> <p>23 Exhibit No. 7, First Marblehead 2006 Annual 105</p> <p>24 Report and 10K marked for identification</p>

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<p style="text-align: right;">Page 5</p> <p style="text-align: center;">EXHIBITS</p> <p>No. Description Page</p> <p>Exhibit No. 8, First Marblehead 2008 Annual Report and 10K, marked for identification 105</p> <p>** Original exhibits retained by Attorney Freiberg</p>	<p style="text-align: right;">Page 7</p> <p>THE VIDEOGRAPHER: Thank you counsel.</p> <p>Will the court reporter please swear in the witness and then we may proceed.</p> <p>JOHN HUPALO, Deponent, having first been satisfactorily identified and duly sworn, deposes and states as follows:</p> <p style="text-align: center;">EXAMINATION</p> <p>MR. FIALKOW: Sorry. Just a quick -- I need to talk to the witness for one second.</p> <p>(Recess.)</p> <p>BY MR. FREIBERG:</p> <p>Q Good afternoon, sir.</p> <p>A Good afternoon.</p> <p>Q My name is Peter Freiberg. I represent Tashanna Golden in this case. First of all, let me thank you for your time here this afternoon. I am going to try to get through this as quickly as possible.</p> <p>Have you ever had a deposition taken before?</p> <p>A No.</p>
<p style="text-align: right;">Page 6</p> <p>THE VIDEOGRAPHER: This is day number one to the videotaped deposition of John Hupalo in the matter of Tashanna B. Golden f/k/a Tashanna B. Pearson versus Nat'l Collegiate Student Loan Trust 2005-3, et al. The case file number in this matter is 16-40809-css.</p> <p>This deposition is being held at One Lincoln Street, Boston, Massachusetts on November 19, 2019.</p> <p>The time on the video monitor is 1:06 p.m. My name is Dean Carson. I am the videographer today along with the court reporter Laura Naylor.</p> <p>Counsel, will you please introduce yourselves and state your appearance and affiliation for the record.</p> <p>MR. FREIBERG: My name is Peter Freiberg on behalf of the plaintiff Tashanna Golden.</p> <p>MR. FIALKOW: I represent -- my name is David Fialkow. I represent the witness, John Hupala.</p> <p>MR. FONTINELLI: And this is Chris Fontinelli on the phone with Locke Lord representing Nat's Collegiate Student Loan Trust 2006-4 and 2016-A.</p>	<p style="text-align: right;">Page 8</p> <p>Q Just a couple of ground rules. If I ask you a question that you don't understand, please ask me to rephrase it. None of the lawyers involved here want you to answer a question that you may not understand.</p> <p>If at any point in time you need to take a break, please just let us know. We are happy to accommodate you. The only caveat is there can't be a pending question when you ask for a break.</p> <p>And then finally if you and I could try to avoid talking over each other it will help Ms. Naylor's job getting everything down accurately. So just please wait until I finish the question before you provide an answer. Okay?</p> <p>A Okay.</p> <p>Q First of all, are you represented by counsel here today?</p> <p>A I am.</p> <p>Q And that is Mr. Fialkow?</p> <p>A That is correct.</p> <p>Q Have you spoken with any other attorneys regarding your deposition?</p> <p>A Informally.</p> <p>Q Who?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A A friend, Ken Roberts, in New York who</p> <p>2 instructed me to contact First Marblehead for</p> <p>3 representation.</p> <p>4 Q You said he is a friend of yours?</p> <p>5 A That's right.</p> <p>6 Q Okay. Other than Mr. Fialkow, though,</p> <p>7 have you spoken to anyone about the substance of --</p> <p>8 A No.</p> <p>9 Q You will have the ability to read and sign</p> <p>10 your transcript which means that you are allowed to</p> <p>11 review it to make sure everything is recorded</p> <p>12 correctly. Do you want to reserve that right?</p> <p>13 A Yes.</p> <p>14 Q Then what I will do is get the original of</p> <p>15 the transcript to Mr. Fialkow who will get with you</p> <p>16 in terms of what you need to do in terms of reading</p> <p>17 and signing.</p> <p>18 MR. FIALKOW: We will waive notary?</p> <p>19 MR. FREIBERG: That's fine.</p> <p>20 MR. FIALKOW: All right.</p> <p>21 MR. FREIBERG: That's fine.</p> <p>22 BY MR. FREIBERG:</p> <p>23 Q Mr. Hupalo, just tell me generally what</p> <p>24 you did to prepare for your deposition, if anything?</p>	<p style="text-align: right;">Page 11</p> <p>1 A We have software programs to help parents</p> <p>2 plan and pay for college.</p> <p>3 Q Thank you for that. When you were working</p> <p>4 for First Marblehead -- first of all, were you</p> <p>5 employed by the First Marblehead Corporation?</p> <p>6 A That is correct.</p> <p>7 Q We will refer to that throughout the</p> <p>8 deposition as FMC.</p> <p>9 A Okay.</p> <p>10 Q You are familiar with what is referred to</p> <p>11 as FMER, First Marblehead Education Resources?</p> <p>12 A Yes.</p> <p>13 Q That was a subsidiary of FMC?</p> <p>14 A Correct.</p> <p>15 Q Did you at any point in time work for</p> <p>16 First Marblehead Education Resources, Inc.?</p> <p>17 A I don't believe so.</p> <p>18 Q What were your title or titles while you</p> <p>19 were working for FMC?</p> <p>20 A When I started the company I was the group</p> <p>21 head of capital markets. Then there were a series</p> <p>22 of promotions that ended with me having the title</p> <p>23 of, I believe, a senior executive vice president</p> <p>24 chief financial officer.</p>
<p style="text-align: right;">Page 10</p> <p>1 A Nothing.</p> <p>2 Q Okay.</p> <p>3 A Other than speak to Mr. Fialkow.</p> <p>4 Q And did you look at any documents?</p> <p>5 A I did not.</p> <p>6 Q Could you tell us what your educational</p> <p>7 background is, please?</p> <p>8 A Yes. I have a BA from Boston University</p> <p>9 in political science and an MBA from New York</p> <p>10 University in finance.</p> <p>11 Q And when did you get the MBA in finance?</p> <p>12 A The MBA in finance was in 1987.</p> <p>13 Q And after graduating from NYU could you</p> <p>14 just give us sort of a quick rundown of what your</p> <p>15 work history was?</p> <p>16 A Yes. I worked in the investment banking</p> <p>17 field from 1987 to 2003. 2003 to 2008 at First</p> <p>18 Marblehead Corporation. 2008 to I will say 2010-ish</p> <p>19 I was doing sort of different activities, my own</p> <p>20 consulting type of activities. Then I went to work</p> <p>21 at Deutsche Bank for about 18 months or two years.</p> <p>22 And in 2012 started the company that I am with now,</p> <p>23 which is Invite Education.</p> <p>24 Q Quickly what does Invite Education do?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Was that the title you had when you left</p> <p>2 the company in 2008?</p> <p>3 A That's correct.</p> <p>4 Q What month in 2008 did you leave First</p> <p>5 Marblehead?</p> <p>6 A My recollection was in October of 2008.</p> <p>7 Q And, generally, what did you do as the</p> <p>8 group head of capital markets for First Marblehead?</p> <p>9 A So our job at Capital Markets Group was to</p> <p>10 take the assets which were generated by the First</p> <p>11 Marblehead business model, package them, and sell</p> <p>12 them to investors. So our job was to make sure that</p> <p>13 they were in a homogenous pool and have the prepared</p> <p>14 for sale.</p> <p>15 Q And the assets -- we will get into this in</p> <p>16 more detail -- but the assets you are referring to</p> <p>17 are student loans?</p> <p>18 A Private credit student loans originated by</p> <p>19 banks. That's right.</p> <p>20 Q And when you say to package them was that</p> <p>21 the process by which the private student loans were</p> <p>22 assigned to the Delaware Statutory Trust?</p> <p>23 A Without quibbling about assigned, yes.</p> <p>24 They were collected and packaged as a group and</p>

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<p style="text-align: right;">Page 13</p> <p>1 sold in those trusts; that is correct?</p> <p>2 Q And the trusts were -- are known as the</p> <p>3 Nat'l Collegiate Student Loan Trusts and then they</p> <p>4 have numbers representing the year and the --</p> <p>5 A I believe they were called the Nat'l</p> <p>6 Collegiate Student Loan Master Trust --</p> <p>7 Q Okay.</p> <p>8 A -- if I am not mistaken.</p> <p>9 Q And then you mentioned a second ago that</p> <p>10 part of your responsibilities were to sell what to</p> <p>11 the investors?</p> <p>12 A Securities.</p> <p>13 Q The asset backed securities?</p> <p>14 A Correct.</p> <p>15 Q Can you tell me, sir, what your duties</p> <p>16 were with respect to filings that were made with the</p> <p>17 Securities and Exchange Commission first of all with</p> <p>18 respect to First Marblehead itself?</p> <p>19 A In my role as chief financial officer I</p> <p>20 signed the financial statements.</p> <p>21 Q Did you actually have some role in</p> <p>22 preparing those financial statements?</p> <p>23 A We had a chief accounting officer and his</p> <p>24 primary responsibility was for that. But as the CFO</p>	<p style="text-align: right;">Page 15</p> <p>1 traded?</p> <p>2 A Yes.</p> <p>3 Q During what period of time?</p> <p>4 A The IPO, if I remember correctly, was</p> <p>5 September 2003. And I'm not sure when the stock</p> <p>6 stopped trading but it was trading at the time of my</p> <p>7 departure.</p> <p>8 Q What market?</p> <p>9 A New York Stock Exchange.</p> <p>10 Q And is it true that the filings that had</p> <p>11 to be made on behalf of the First Marblehead were</p> <p>12 required because they were publicly traded</p> <p>13 securities?</p> <p>14 A The debt securities were publically traded</p> <p>15 securities; that's right.</p> <p>16 Q What I am talking about is the First</p> <p>17 Marblehead stock. That was publicly traded for a</p> <p>18 period of time?</p> <p>19 A That's correct.</p> <p>20 Q And that triggered an obligation by First</p> <p>21 Marblehead to make filings with the Securities and</p> <p>22 Exchange Commission?</p> <p>23 A Related to the stock; that is correct.</p> <p>24 Q To the stock of the First Marblehead</p>
<p style="text-align: right;">Page 14</p> <p>1 it was my ultimate responsibility to sign those.</p> <p>2 Q And did that include signing the Form</p> <p>3 10K's at First Marblehead?</p> <p>4 A I believe so. That's right.</p> <p>5 Q Okay. Did you have any responsibility for</p> <p>6 signing any SEC disclosure -- documents filed with</p> <p>7 the SEC related to the trust themselves?</p> <p>8 A For the publically issued trusts I would</p> <p>9 imagine that's correct, yes. We did both private</p> <p>10 placements and publically issued securitizations.</p> <p>11 Q How many of the trusts, the</p> <p>12 securitizations, were private and how many were</p> <p>13 public?</p> <p>14 A I don't recall.</p> <p>15 Q Were there more than -- let me --</p> <p>16 A Yes. I just -- I don't recall.</p> <p>17 Q Was there any way to -- were most of them</p> <p>18 private and most of them public?</p> <p>19 A I really just don't remember.</p> <p>20 Q But for those that were publically traded</p> <p>21 you had some role in preparing filing the SEC</p> <p>22 filings?</p> <p>23 A That's correct.</p> <p>24 Q Was the stock of First Marblehead publicly</p>	<p style="text-align: right;">Page 16</p> <p>1 Corporation?</p> <p>2 A That's correct.</p> <p>3 Q The trust themselves --</p> <p>4 A Yes.</p> <p>5 Q -- the asset backed securities, how were</p> <p>6 those traded or was there a market they were traded</p> <p>7 on?</p> <p>8 MR. FONTENELLI: Object to the form.</p> <p>9 BY MR. FREIBERG:</p> <p>10 Q And what I am getting at is the publicly</p> <p>11 traded asset backed securities.</p> <p>12 A The publicly traded asset backed</p> <p>13 securities were traded among the broker dealers.</p> <p>14 Q But because they were publicly traded the</p> <p>15 trust themselves had to make filings with the</p> <p>16 Securities and Exchange Commission?</p> <p>17 A Correct.</p> <p>18 Q The securities that were sold, not the</p> <p>19 stock of the First Marblehead Corporation but the</p> <p>20 securities, what were they?</p> <p>21 A They were asset backed securities.</p> <p>22 Q Were they considered notes?</p> <p>23 A It's debt instruments. That's right.</p> <p>24 Q Whereby the trusts themselves were</p>

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<p style="text-align: right;">Page 17</p> <p>1 obligated, so to speak, to pay to the investors in</p> <p>2 the debt securities?</p> <p>3 A That's right.</p> <p>4 Q And what the investors -- excuse me. What</p> <p>5 the trust paid was money that was collected from</p> <p>6 principle and interest for the student loans</p> <p>7 themselves?</p> <p>8 A That's correct.</p> <p>9 Q And did you have any role in preparing or</p> <p>10 filing any prospectuses for the debt securities</p> <p>11 issued by the trust?</p> <p>12 A Yes.</p> <p>13 Q What is a prospectus?</p> <p>14 A A prospectus is an outline of the</p> <p>15 transaction, the underlying collateral, the risks of</p> <p>16 the transaction and related attached documents</p> <p>17 having to do with the legal entity, the trust</p> <p>18 itself.</p> <p>19 Q Thank you. When you worked for the First</p> <p>20 Marblehead Corporation, where was the office?</p> <p>21 A There were all -- when I worked for First</p> <p>22 Marblehead I was in three different locations. One</p> <p>23 in Marblehead. One here in Boston. And eventually</p> <p>24 the Pru, which was the primary location.</p>	<p style="text-align: right;">Page 19</p> <p>1 A Well, in this context what is the</p> <p>2 definition of an insurance company?</p> <p>3 Q Let me ask you. What was TERI. What was</p> <p>4 your understanding of what TERI was?</p> <p>5 A TERI was a not for profit guarantor of the</p> <p>6 principle and interest under the underlying loans.</p> <p>7 Q TERI did not issue insurance policies that</p> <p>8 insured the underlying loans?</p> <p>9 A I am trying to remember what the mechanism</p> <p>10 was by which they bestowed the guarantee on the</p> <p>11 loan. I don't recall if it was called an insurance</p> <p>12 policy or anything else.</p> <p>13 Q Did TERI guarantee any federal loans?</p> <p>14 A No.</p> <p>15 Q Did TERI ever own any of the loans itself?</p> <p>16 A I don't believe so.</p> <p>17 Q Did TERI ever underwrite any of the loans,</p> <p>18 the student loans?</p> <p>19 A When you say underwrite?</p> <p>20 Q Did TERI ever provide any of the money for</p> <p>21 the loans themselves?</p> <p>22 A TERI did not fund loans, as far as I know.</p> <p>23 Q Did TERI ever service any of the loans?</p> <p>24 A When in collection servicing, no. They</p>
<p style="text-align: right;">Page 18</p> <p>1 Q I'm sorry. It was called what?</p> <p>2 A The Prudential Tower.</p> <p>3 Q The Prudential Tower. Okay.</p> <p>4 A Yes. The Pru.</p> <p>5 Q Thank you. At any period of time did TERI</p> <p>6 work in the same office as First Marblehead or same</p> <p>7 office space?</p> <p>8 MR. FIALKOW: Objection. I think -- just</p> <p>9 so we make sure, TERI is?</p> <p>10 MR. FREIBERG: Good point, Dave.</p> <p>11 BY MR. FREIBERG:</p> <p>12 Q When I refer to something called TERI</p> <p>13 throughout this deposition, I am going to be</p> <p>14 referring to the Education Resources, Inc.</p> <p>15 A Okay.</p> <p>16 Q Are you familiar with that?</p> <p>17 A I am.</p> <p>18 Q At any point in time, did Terry share</p> <p>19 office space with First Marblehead?</p> <p>20 A Not that I am aware of.</p> <p>21 Q You mentioned a second ago that you were</p> <p>22 familiar with TERI. TERI is not an insurance</p> <p>23 company; correct? Excuse me. Was not an insurance</p> <p>24 company?</p>	<p style="text-align: right;">Page 20</p> <p>1 have done some default servicing. I don't recall.</p> <p>2 Q Okay.</p> <p>3 A That's post-default.</p> <p>4 Q Did TERI ever advance the money to the</p> <p>5 student borrowers?</p> <p>6 A Not that I am aware of.</p> <p>7 Q Each loan that TERI guaranteed that ended</p> <p>8 up in one or more of the trusts was funded by a</p> <p>9 participating financial institution; correct?</p> <p>10 A Correct.</p> <p>11 Q And each loan -- each of those private</p> <p>12 financial institutions -- excuse me. Each of those</p> <p>13 financial institutions was a private bank; is that</p> <p>14 correct? What I'm --</p> <p>15 A In most cases.</p> <p>16 Q Okay.</p> <p>17 A There may have been some other funders</p> <p>18 that I -- but in the general business model it was a</p> <p>19 financial institution.</p> <p>20 Q A private bank, essentially?</p> <p>21 A Yes.</p> <p>22 Q Okay.</p> <p>23 A I'm sorry. Private meaning they may have</p> <p>24 been publicly traded but not another 501C3 or</p>

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<p style="text-align: right;">Page 21</p> <p>1 something of that nature.</p> <p>2 Q Correct. That is what I am getting at.</p> <p>3 None of the loans that TERI guaranteed were</p> <p>4 sponsored or underwritten by any state or federal</p> <p>5 government?</p> <p>6 A I don't believe so. Certainly not the</p> <p>7 federal government.</p> <p>8 Q Fair to state, though, that all of the</p> <p>9 loans that went to the trust were originated by</p> <p>10 private banks?</p> <p>11 A When you say originated, you mean funded</p> <p>12 or do you mean processed?</p> <p>13 Q Yes. Funded.</p> <p>14 A Yes. Funded.</p> <p>15 Q Do you know if TERI was entitled to any</p> <p>16 type of financial assistance from the United States</p> <p>17 Department of Education?</p> <p>18 A I don't believe they were.</p> <p>19 Q And do you know if TERI was entitled to</p> <p>20 any type of re-insurance from the United States</p> <p>21 Department of Education?</p> <p>22 A I don't believe they were.</p> <p>23 Q Did TERI own any loan related assets?</p> <p>24 A Not that I am aware of other than</p>	<p style="text-align: right;">Page 23</p> <p>1 A Mid 90's, early 90's, perhaps '93-ish.</p> <p>2 Q And how did you come to work for the First</p> <p>3 Marblehead company -- Corporation?</p> <p>4 A In 2003 I made a presentation to the board</p> <p>5 of directors. And the CEO invited me to join the</p> <p>6 firm. I had been their investment banker at that</p> <p>7 time or one of their investment bankers at that</p> <p>8 time.</p> <p>9 Q And in your role as an investment banker</p> <p>10 prior to joining First Marblehead had you had any</p> <p>11 experience with marketing securities, asset backed</p> <p>12 securities that First Marblehead had structured?</p> <p>13 A Yes.</p> <p>14 Q Similar to the Nat'l Collegiate Student</p> <p>15 Loan Trust it held private loans?</p> <p>16 A That's correct.</p> <p>17 Q And as an investment banker was your role</p> <p>18 to sell the debt instruments themselves to</p> <p>19 investors?</p> <p>20 A It was my role to coordinate the sale with</p> <p>21 the sales and trading teams and others within the</p> <p>22 firm. But I didn't specifically sell bonds to</p> <p>23 investors.</p> <p>24 Q Is it fair to state that the First</p>
<p style="text-align: right;">Page 22</p> <p>1 defaulted student loans.</p> <p>2 Q After it paid the guarantee?</p> <p>3 A Right.</p> <p>4 Q Who was -- who paid the guaranty fees for</p> <p>5 TERI's guaranty, do you know?</p> <p>6 A I'm trying to remember if the borrower</p> <p>7 paid the fee. I don't recall specifically.</p> <p>8 Q Okay. Do you know if the guaranty fee was</p> <p>9 considered part of the origination fee for the loans</p> <p>10 from the banks?</p> <p>11 A I don't recall specifically.</p> <p>12 Q Okay. We'll talk about this in a little</p> <p>13 bit more detail later but was the guaranty fee</p> <p>14 income that TERI owned kept in a segregated account?</p> <p>15 A I would imagine so for each trust. It is</p> <p>16 part of the perfected security interest in the</p> <p>17 asset.</p> <p>18 Q Such that the trust had a security</p> <p>19 interest in the guaranty fees that TERI had put into</p> <p>20 escrow and set aside, something like that?</p> <p>21 A I don't recall if they escrowed by</p> <p>22 transaction or if it was a general escrow.</p> <p>23 Q The First Marblehead Corporation. Do you</p> <p>24 know when it was organized? Formed as a business?</p>	<p style="text-align: right;">Page 24</p> <p>1 Marblehead Corporation provides outsourcing services</p> <p>2 for private education lending?</p> <p>3 A That's what we did.</p> <p>4 Q And by the way, sir, what I am going to be</p> <p>5 asking you a lot about today occurred, you know,</p> <p>6 between 2001 and 2008, 2010. So to the extent you</p> <p>7 and I can kind of limit our conversation today to</p> <p>8 that time period? If I'm going to ask you things</p> <p>9 that happened or that you know about happened after</p> <p>10 2008 or 2010, I'll let you know.</p> <p>11 A Fair.</p> <p>12 Q Is the First Marblehead Corporation</p> <p>13 essentially an education finance company?</p> <p>14 A Yes.</p> <p>15 Q And the First Marblehead Corporation while</p> <p>16 you were there offered program design and marketing</p> <p>17 for its clients; correct?</p> <p>18 A Correct.</p> <p>19 Q And its clients were private banks?</p> <p>20 A As we said before, right.</p> <p>21 Q And part of the services that First</p> <p>22 Marblehead offered were borrower inquiring an</p> <p>23 application -- loan application processing; correct?</p> <p>24 A That's correct.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Q First Marblehead also organized the -- not</p> <p>2 organized but had a role in the loan origination</p> <p>3 itself?</p> <p>4 A That's correct.</p> <p>5 Q And the disbursement of the loan proceeds</p> <p>6 to the borrowers?</p> <p>7 A That's correct.</p> <p>8 Q And then First Marblehead also had a role</p> <p>9 in the securitization of the loans?</p> <p>10 A That's correct.</p> <p>11 Q Before we get ahead of ourselves could</p> <p>12 you just generally define what it means to</p> <p>13 securitize something like a student loan?</p> <p>14 A Certainly. The securitization of the</p> <p>15 student loan asset consisted of, as we said before,</p> <p>16 forming a pool of assets, having those assets rated</p> <p>17 by a rating agency, having the trust formed by a</p> <p>18 trustee who is acting on behalf of the bond holders.</p> <p>19 Then going through the process of modeling</p> <p>20 cash flows to show what the investor returns would</p> <p>21 be based on the principle and interest income that</p> <p>22 was assumed to come from that revenue stream from</p> <p>23 those underlying assets. And basically that's the</p> <p>24 sale of a securitized asset.</p>	<p style="text-align: right;">Page 27</p> <p>1 it, to the trusts themselves?</p> <p>2 A Correct.</p> <p>3 Q And is it correct that the securitization</p> <p>4 that enabled the lenders to sell these liquid assets</p> <p>5 that essentially were potentially illiquid?</p> <p>6 A Yes.</p> <p>7 Q And is it correct that the securitization</p> <p>8 enabled the reallocation of the risk of default?</p> <p>9 A Could you rephrase that?</p> <p>10 Q Sure. Did the securitization allow for</p> <p>11 the transfer of risk of default by the student</p> <p>12 borrowers?</p> <p>13 A I don't believe so.</p> <p>14 Q After the loans were transferred to the</p> <p>15 trusts who had the risk of default of the borrowers?</p> <p>16 A The reason I gave the last answer is the</p> <p>17 same as this one. I think the risks were mandatory.</p> <p>18 Q Because of the guaranty?</p> <p>19 A Correct.</p> <p>20 Q And then, finally, one of the services</p> <p>21 that First Marblehead engaged in was actually the</p> <p>22 servicing of the loans after they had been</p> <p>23 disbursed?</p> <p>24 A Correct.</p>
<p style="text-align: right;">Page 26</p> <p>1 Q Are you familiar with the term make and</p> <p>2 sell loans?</p> <p>3 A Yes.</p> <p>4 Q What percentage of the loans that were</p> <p>5 originated by First Marblehead were make and sell</p> <p>6 loans?</p> <p>7 A When we say make and sell, so we are</p> <p>8 clear, what I think of that term to mean is that the</p> <p>9 banks would make the loan. They would fund it on</p> <p>10 their balance sheet. And then they would sell it to</p> <p>11 First Marblehead at the time of the securitization.</p> <p>12 Q Correct. That is what -- I should have</p> <p>13 asked you what you understood to be a make and sell</p> <p>14 loan.</p> <p>15 A That is what I understand.</p> <p>16 Q So what percentage of the loans that were</p> <p>17 originated by First Marblehead were make and sell</p> <p>18 loans?</p> <p>19 A Nearly a hundred percent if not a hundred</p> <p>20 percent.</p> <p>21 Q Such that near or if not a hundred percent</p> <p>22 of the loans that were originated by First</p> <p>23 Marblehead were originated with the intent to then</p> <p>24 sell those, assign them, however you want to phrase</p>	<p style="text-align: right;">Page 28</p> <p>1 Q And servicing included borrower inquiries</p> <p>2 about loan terms?</p> <p>3 A That's correct.</p> <p>4 Q Collections?</p> <p>5 A Yes.</p> <p>6 Q Receipt of monies. Things like that?</p> <p>7 A Correct.</p> <p>8 Q Did First Marblehead offer a fully</p> <p>9 integrated suite of outsourcing materials in</p> <p>10 connection with its private student loan programs?</p> <p>11 A Can you say the last part? Fully</p> <p>12 integrated --</p> <p>13 Q A fully integrated suite of outsourcing</p> <p>14 services in connection with its private student --</p> <p>15 A Yes.</p> <p>16 Q And did First Marblehead offer your</p> <p>17 clients -- strike that question.</p> <p>18 The clients of First Marblehead were who?</p> <p>19 A The banks that we talked about before.</p> <p>20 Q Did First Marblehead offer the banks the</p> <p>21 opportunity to outsource all of the key components</p> <p>22 of their loan programs?</p> <p>23 A Yes.</p> <p>24 Q And after 2001 First Marblehead contracted</p>

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<p style="text-align: right;">Page 29</p> <p>1 with TERI to perform many of the services for its</p> <p>2 bank clients; is that correct?</p> <p>3 A I believe so, yes. Can you repeat that,</p> <p>4 sir?</p> <p>5 Q Sure. After 2001 there was an asset</p> <p>6 purchase agreement between TERI and First</p> <p>7 Marblehead. Are you familiar with that?</p> <p>8 A I am not recalling it in detail.</p> <p>9 Q Did -- when you were with First</p> <p>10 Marblehead, who performed the services that we just</p> <p>11 described for the private banks?</p> <p>12 MR. FIALKOW: Objection. You can answer.</p> <p>13 THE WITNESS: I'm sorry?</p> <p>14 MR. FIALKOW: You can answer.</p> <p>15 THE WITNESS: We are talking about</p> <p>16 post-origination?</p> <p>17 BY MR. FREIBERG:</p> <p>18 Q Yes.</p> <p>19 A Third party servicer.</p> <p>20 Q Okay. FEA?</p> <p>21 A FEA. Correct.</p> <p>22 Q Other than third party servicing -- strike</p> <p>23 the question. First Marblehead it's a for profit</p> <p>24 corporation?</p>	<p style="text-align: right;">Page 31</p> <p>1 platform.</p> <p>2 They would fund the loans and hold them on</p> <p>3 the balance sheet. At a time when there was an</p> <p>4 aggregated amount of lines and there was a timing</p> <p>5 opportunity in the market First Marblehead would</p> <p>6 send a notice to the banks that there would be a</p> <p>7 securitization.</p> <p>8 Give the date of the securitization. Then</p> <p>9 have a determination of what amount of loans were</p> <p>10 available from each one of the banks for purchase in</p> <p>11 that period.</p> <p>12 And we would get all the data on those</p> <p>13 loans and then have the investment bankers go</p> <p>14 through the process of working with the rating</p> <p>15 agencies.</p> <p>16 And then the rest of the process I</p> <p>17 described earlier.</p> <p>18 Q Okay. And these were all private student</p> <p>19 loans?</p> <p>20 A Correct.</p> <p>21 Q No Stafford loans --</p> <p>22 A No.</p> <p>23 Q -- included within the trust. No federal</p> <p>24 loans?</p>
<p style="text-align: right;">Page 30</p> <p>1 A Correct.</p> <p>2 Q And has it been a for profit corporation</p> <p>3 at all times, as far as you know?</p> <p>4 A Yes.</p> <p>5 Q Okay. And incidentally, were there any</p> <p>6 restrictions on the transferability of the stock of</p> <p>7 First Marblehead?</p> <p>8 A Transferability?</p> <p>9 Q The trading of First Marblehead?</p> <p>10 A For officers?</p> <p>11 Q Other than for officers?</p> <p>12 A In the window periods, no, as a publically</p> <p>13 traded company.</p> <p>14 Q Okay.</p> <p>15 A Prior to that it was private and there</p> <p>16 were obviously other restrictions.</p> <p>17 Q First Marblehead was the entity that</p> <p>18 actually created the securitization trust?</p> <p>19 A Correct.</p> <p>20 Q Can you tell me how that worked?</p> <p>21 A Yes. As we discussed before with the</p> <p>22 asset securitization purchase -- say the methodology</p> <p>23 or the program was that the banks would originate</p> <p>24 the loans through the First Marblehead origination</p>	<p style="text-align: right;">Page 32</p> <p>1 A No.</p> <p>2 Q And is it correct that all of the loans</p> <p>3 that were securitized into the trust were guaranteed</p> <p>4 by TERI?</p> <p>5 A Yes.</p> <p>6 Q A hundred percent?</p> <p>7 A As far as I remember, yes.</p> <p>8 Q And to backtrack a little bit, the trust</p> <p>9 would then issue the debt securities --</p> <p>10 A That's correct.</p> <p>11 Q -- for sale to the investors?</p> <p>12 A That's correct.</p> <p>13 Q Typically what -- who -- what type of</p> <p>14 investors were buying the debt securities?</p> <p>15 A The market evolved over the period of time</p> <p>16 that you are talking about. It became a global</p> <p>17 market. We had investors purchasing bonds and</p> <p>18 securities from the trust from Asia, from Europe,</p> <p>19 from the United States.</p> <p>20 Q Institutional investors mostly?</p> <p>21 A Institutional investors almost</p> <p>22 exclusively.</p> <p>23 Q Okay. During the period of time that you</p> <p>24 were employed by the First Marblehead Corporation</p>

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<p style="text-align: right;">Page 33</p> <p>1 did the company's profitability depend largely on</p> <p>2 the securitization process?</p> <p>3 A Yes.</p> <p>4 Q And did the profitability of the First</p> <p>5 Marblehead Corporation when you were employed there</p> <p>6 depend upon its ability to earn structural advisory</p> <p>7 fees?</p> <p>8 A Yes.</p> <p>9 Q And did the profitability of the First</p> <p>10 Marblehead Corporation when you were employed there</p> <p>11 depend upon its earning -- that may not be the right</p> <p>12 word -- the residuals that First Marblehead held in</p> <p>13 the trust?</p> <p>14 A Yes.</p> <p>15 Q The structural advisory fees am I correct</p> <p>16 that when a securitization was completed that the</p> <p>17 First Marblehead got what's known as upfront</p> <p>18 structural advisory fee?</p> <p>19 A That's correct.</p> <p>20 Q And after receiving the upfront structural</p> <p>21 advisory fee were there additional advisory fees</p> <p>22 that First Marblehead earned?</p> <p>23 A You referenced the residuals before. So</p> <p>24 there was a calculation of what the present value of</p>	<p style="text-align: right;">Page 35</p> <p>1 originated and then securitized?</p> <p>2 A You said the primary driver of the --</p> <p>3 Q Profitability?</p> <p>4 A It was one of the drivers of</p> <p>5 profitability.</p> <p>6 Q Loan volume was important though; correct?</p> <p>7 A It was.</p> <p>8 Q And how did the TERI guaranty figure into</p> <p>9 loan volume?</p> <p>10 A Well, the TERI guaranty was part of the</p> <p>11 analysis that the investor would do and the rating</p> <p>12 agencies would do. So given the fact that we</p> <p>13 securitized almost 100 percent TERI guaranty loans</p> <p>14 I don't really have a measure to know what impact it</p> <p>15 had on the volume. We just securitized TERI</p> <p>16 guaranty loans.</p> <p>17 Q Was the TERI guaranty important -- an</p> <p>18 important factor to driving loan volume?</p> <p>19 A It was a factor. I think all the</p> <p>20 investors had different factors that they looked at</p> <p>21 but the guaranty was one of those measures.</p> <p>22 Q Was student loan asset backed</p> <p>23 securitizations historically First Marblehead's</p> <p>24 sole source of financing?</p>
<p style="text-align: right;">Page 34</p> <p>1 the residual would be given certain assumptions.</p> <p>2 Q Before we get too far ahead of ourselves,</p> <p>3 what is the residual?</p> <p>4 A So the residual is the cashflow that</p> <p>5 remains after the bonds have been paid in full, all</p> <p>6 P&I is paid, principal and interest.</p> <p>7 Q Essentially the residual that is left in</p> <p>8 the trust itself after all of the purchases of the</p> <p>9 debt securities have been paid --</p> <p>10 A That's correct.</p> <p>11 Q Repaid.</p> <p>12 A The debt securities and all the fees for</p> <p>13 the trustee and the servicer and all the rest. It's</p> <p>14 basically the remaining cash flow.</p> <p>15 Q And at all times when you were employed</p> <p>16 with the First Marblehead did it, in fact, have a</p> <p>17 residual interest in the trusts?</p> <p>18 A Yes.</p> <p>19 Q Am I correct that TERI also had a residual</p> <p>20 interest in the trusts?</p> <p>21 A I believe so.</p> <p>22 Q While you were employed with the First</p> <p>23 Marblehead was the primary driver of profitability</p> <p>24 of the company the volume of loans that could be</p>	<p style="text-align: right;">Page 36</p> <p>1 A Yes.</p> <p>2 Q And was TERI an integral part of that?</p> <p>3 A You are saying the TERI guaranty?</p> <p>4 Q Yes.</p> <p>5 A It was part of the loan package that the</p> <p>6 -- it was inherent in the assets they were</p> <p>7 securitizing, so it was important from that</p> <p>8 perspective, yes.</p> <p>9 Q The guaranty's of the loans reduced the</p> <p>10 risk to the purchasers of the debt securities?</p> <p>11 A Correct.</p> <p>12 Q And the TERI guaranty made the debt to the</p> <p>13 securitized asset back trust more valuable? The</p> <p>14 debt security?</p> <p>15 A Yes.</p> <p>16 Q Was one of the -- well, strike the</p> <p>17 question.</p> <p>18 There were private label things known as</p> <p>19 private label programs at First Marblehead?</p> <p>20 A That's right.</p> <p>21 Q What is a private label program?</p> <p>22 A The private label program as I remember</p> <p>23 was the ability to use one of the financial</p> <p>24 institutions brand name as the representative.</p>

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1 (Lynn Swanson appearing telephonically
2 joined the deposition.)
3 MR. FREIBERG: It's Lynn Swanson. She is
4 also with my office down in New Orleans.
5 THE WITNESS: Great. Thanks. Can you
6 repeat the question then?
7 BY MR. FREIBERG:
8 Q We were talking about the private label
9 programs.
10 A All right. Okay.
11 Q What was the private label program?
12 A So, to use an example, Bank of America had
13 a Bank of America private credit student loan that
14 was private labeled, some call it white labeled
15 meaning that they took the asset that was generated
16 according to the credit criteria and they offered
17 that to their clients.
18 Other banks perhaps Chase or P&C or any of
19 the other clients would use an identical underlying
20 credit criteria and label those -- private label
21 those loans to their clients as well, customers.
22 Q One of the components of the private label
23 programs was the opportunity for your bank, private
24 bank lending clients to mitigate their risk through

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1 the TERI guaranty?
2 A Correct.
3 Q And one of the key components of First
4 Marblehead's ability to market the asset backed
5 securities was the TERI guaranty; correct?
6 A That's correct.
7 Q And that's because the TERI guaranty
8 mitigated the risk to the purchasers of the debt
9 securities?
10 A Correct.
11 Q Did First Marblehead collaborate with TERI
12 to comply with the laws and regulations regarding
13 disclosures for the asset backed securities?
14 A Did you say collaborate?
15 Q Was there any overlap, cooperation between
16 TERI and First Marblehead complying with the laws
17 and regulations regarding -- let me rephrase the
18 question.
19 Did TERI have any role in the issuance of
20 the reports that had to be filed with the SEC either
21 for First Marblehead or for the trusts themselves?
22 A My recollection on the reports and the
23 filings, no. TERI signed off on the disclosure
24 documentation in the prospectus that you referenced

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1 earlier.
2 Q When you say signed off, did TERI have to
3 approve?
4 A And why was that?
5 Q They are a separate entity.
6 Q Okay. And we will get into this in more
7 detail. But at points in the disclosures that First
8 Marblehead made for the trusts TERI's financials
9 were included?
10 A Correct.
11 Q Why was that?
12 A Because of the guaranty. So the
13 disclosure counsel or others, I am not sure whom,
14 determined that was a material piece of information
15 an investor should have, the financial health of
16 TERI.
17 Q The financial health of TERI was material
18 to the institutional investors that were purchasing
19 the debt securities against the trust?
20 A Because of the guaranty.
21 Q Because of the guaranty. Okay. Did at
22 any point in time while you were employed by First
23 Marblehead did TERI assume the responsibility for
24 compliance?

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1 A No.
2 Q And at any point in time did TERI delegate
3 the responsibility for compliance to First
4 Marblehead?
5 A Their own internal compliance?
6 Q Yes.
7 A I don't believe so.
8 Q When the loan funds were disbursed did
9 First Marblehead disburse those funds on behalf of
10 TERI?
11 A On behalf of TERI?
12 Q Or the banks?
13 A The banks.
14 Q So the monies that were sent to the
15 borrowers came from an account -- a First Marblehead
16 account?
17 A No. I believe -- if I remember
18 specifically it came from -- at no time did First
19 Marblehead own a loan on its balance sheet. So I
20 believe that there was a mechanism by which the
21 banks would have funded that loan. But I was not in
22 the operations. But we did not balance sheet loans.
23 Q Okay.
24 A Not even for a second.

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<p style="text-align: right;">Page 41</p> <p>1 Q First Marblehead?</p> <p>2 A Correct.</p> <p>3 Q And I was going to ask you later. But</p> <p>4 First Marblehead never actually owned the loans</p> <p>5 themselves?</p> <p>6 A That's correct.</p> <p>7 Q The loans were owned by the banks --</p> <p>8 A The banks.</p> <p>9 Q -- upon original -- excuse me -- upon</p> <p>10 disbursement?</p> <p>11 A Correct.</p> <p>12 Q And who was the next owner?</p> <p>13 A The trust.</p> <p>14 Q The trust. Are you familiar with an</p> <p>15 entity known as National Collegiate Funding, LLC?</p> <p>16 A I remember the name but I don't remember</p> <p>17 the function.</p> <p>18 Q Okay. I guess my question is the account</p> <p>19 through which the monies flowed from the banks to</p> <p>20 the borrowers, whose account was that?</p> <p>21 A I'm sorry. So can you say that again?</p> <p>22 Q Sure. Whose account was used to get the</p> <p>23 money from the banks to the borrowers, the student</p> <p>24 borrowers?</p>	<p style="text-align: right;">Page 43</p> <p>1 Marblehead series of transactions that funded those</p> <p>2 private credit student loans.</p> <p>3 Q Was the National Collegiate Trust a</p> <p>4 subsidiary of First Marblehead?</p> <p>5 MR. FONTINELLI: Objection.</p> <p>6 THE WITNESS: I don't remember what --</p> <p>7 what the legal status was. I don't believe it was a</p> <p>8 subsidiary, though. It was a -- no, in fact it was</p> <p>9 an off balance sheet. It was not a subsidiary, I</p> <p>10 think, as we know it.</p> <p>11 BY MR. FREIBERG:</p> <p>12 Q Okay. Was it an affiliate?</p> <p>13 MR. FONTINELLI: Objection.</p> <p>14 THE WITNESS: No. It was a -- it was just</p> <p>15 an entity that received the loans.</p> <p>16 BY MR. FREIBERG:</p> <p>17 Q Who actually organized -- strike that</p> <p>18 question. The trusts themselves are statutory</p> <p>19 trusts?</p> <p>20 A Correct.</p> <p>21 Q Organized in the State of Delaware?</p> <p>22 A Correct.</p> <p>23 Q Who actually formed or organized the</p> <p>24 statutory trusts?</p>
<p style="text-align: right;">Page 42</p> <p>1 A I don't remember the detail of how that</p> <p>2 was.</p> <p>3 Q Were the loan monies made available by the</p> <p>4 banks to TERI?</p> <p>5 A I don't believe so.</p> <p>6 Q Were the loan monies made available by the</p> <p>7 banks to First Marblehead --</p> <p>8 A Yes.</p> <p>9 Q -- for disbursement?</p> <p>10 A For disbursement, yes.</p> <p>11 Q Are you familiar with an entity known as</p> <p>12 the National Collegiate Trust?</p> <p>13 A Yes.</p> <p>14 Q And what is the National Collegiate Trust?</p> <p>15 A The National Collegiate Trust was the</p> <p>16 issuing entity for the private credit student loans.</p> <p>17 Q Issuing entity for the debt securities?</p> <p>18 A Correct.</p> <p>19 Q And is there more than one National</p> <p>20 Collegiate Trust?</p> <p>21 A Well, I said earlier I thought it was the</p> <p>22 National Collegiate Student Loan Master Trust but</p> <p>23 there may have been different trust entities. But</p> <p>24 National Collegiate Student Loan Trust was the first</p>	<p style="text-align: right;">Page 44</p> <p>1 A The -- and you made the point earlier</p> <p>2 about the time period of 2001 to 8 or 10 or whatever</p> <p>3 it might be. And I wanted to note at that point</p> <p>4 that's, you know, more than 15 years ago so. I am</p> <p>5 trying to remember the detail of what were fairly</p> <p>6 intricate student loan transactions. You</p> <p>7 understand?</p> <p>8 Q Understood.</p> <p>9 A Yes.</p> <p>10 Q And I only want you to tell us what you</p> <p>11 can know or what you remember.</p> <p>12 A I know. So could you again ask --</p> <p>13 Q Sure. Who actually organized or</p> <p>14 incorporated, that's not exactly the right word, but</p> <p>15 organized the statutory trusts?</p> <p>16 A The lawyers.</p> <p>17 Q Whose lawyers?</p> <p>18 A So there were trustees lawyers, the</p> <p>19 corporation had lawyers, the trust -- and when I</p> <p>20 said the trustees lawyers the trust was represented</p> <p>21 so they were at the table as well.</p> <p>22 Q Was First Marblehead considered the</p> <p>23 sponsor of the trust?</p> <p>24 A I would say that.</p>

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1 Q And was any entity associated with First
2 Marblehead considered to be the depositor for the
3 trust?
4 MR. FONTINELLI: Objection to form.
5 THE WITNESS: Depositor is a term of art.
6 How do we mean it here?
7 BY MR. FREIBERG:
8 Q What entity actually deposited the student
9 loans into the trusts?
10 MR. FONTINELLI: Objection.
11 THE WITNESS: Thank you. The banks.
12 BY MR. FREIBERG:
13 Q Okay. So the First Marblehead, as you
14 said, never had ownership of the loans?
15 A That's correct.
16 Q I think you said First Marblehead never
17 had the loans on its balance sheets?
18 A Correct.
19 Q Ever?
20 A Correct. As far as I remember that's
21 right.
22 Q What was TERI's role in the securitization
23 process?
24 A TERI provided the guaranty and they

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1 reviewed the documents, as I described before.
2 Q And TERI also had some role in originating
3 the loans themselves; correct?
4 MR. FIALKOW: Objection.
5 THE WITNESS: Other than applying the
6 guaranty?
7 BY MR. FREIBERG:
8 Q Yes.
9 A I don't believe so.
10 Q The origination loans was done by First
11 Marblehead?
12 A Correct.
13 Q What role did TERI's -- excuse me. What
14 role did TERI's data have in the securitization
15 process?
16 A TERI's data was used primarily by the
17 rating agencies to determine potential default rates
18 on underlying collateral.
19 Q The rating agencies essentially rating the
20 --
21 A Securitization. Securities.
22 Q The debt securities?
23 A Correct.
24 Q Did TERI's role have any -- excuse me --

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1 TERI's data have any role in the credit rating of
2 First Marblehead itself?
3 A No.
4 Q Did First Marblehead derive any benefit
5 from TERI's role in the securitization process?
6 A The benefit was the guaranty.
7 Q And do the trusts themselves derive a
8 benefit from TERI's role in the securitization
9 process?
10 A Same.
11 Q The guaranty?
12 MR. FONTINELLI: Objection to form.
13 THE WITNESS: The guaranty.
14 BY MR. FREIBERG:
15 Q Did TERI perform a private benefit to
16 First Marblehead?
17 A I don't -- by private benefit?
18 Q Let me rephrase the question. Did First
19 Marblehead itself benefit in anyway from TERI?
20 A From the guaranty that they provided for
21 the loans.
22 Q We will get into this a little bit later,
23 but at points in time TERI was actually paying First
24 Marblehead to do loan servicing origination

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1 disbursement?
2 MR. FIALKOW: Objection. You can answer.
3 THE WITNESS: Again, I don't recall how
4 the -- if -- it may have been that there was a
5 management contract of some kind, using that term
6 loosely, as their -- as the servicer or the
7 origination servicer, if you will. We had to
8 underwrite the loans according to TERI underwriting
9 guidelines. So I think you jogged my memory on that
10 that there would be some arrangement for that to
11 happen.
12 BY MR. FREIBERG:
13 Q Did TERI provide an advantage to the First
14 Marblehead Corporation in its securitization
15 process?
16 A Well, I said before, because of the
17 guaranty.
18 Q And did that guaranty provide an advantage
19 to First Marblehead over its competitors?
20 A It provided First Marblehead the
21 opportunity to sell securities to investors I'll say
22 at prices that were -- that would be advantageous
23 compared to not having a guaranty, yes.
24 Q Would it be fair to state that the TERI

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<p style="text-align: right;">Page 49</p> <p>1 guaranty provided a better opportunity to the First</p> <p>2 Marblehead Corporation to sell its debt securities?</p> <p>3 A Yes.</p> <p>4 Q Did TERI help to carry on the trade or</p> <p>5 business of the First Marblehead Corporation?</p> <p>6 MR. FIALKOW: Objection.</p> <p>7 THE WITNESS: Can you say that again? Did</p> <p>8 --</p> <p>9 BY MR. FREIBERG:</p> <p>10 Q Did TERI in anyway assist First Marblehead</p> <p>11 carrying on its business?</p> <p>12 A Assist from the perspective of providing</p> <p>13 the guaranty. That would be it.</p> <p>14 Q Would it be fair to state that the</p> <p>15 guaranty assisted First Marblehead carrying on its</p> <p>16 business?</p> <p>17 A Yes. When you said assist I thought you</p> <p>18 meant something like with the management operations</p> <p>19 or something like that. But, no, from the</p> <p>20 perspective of providing a guaranty that was an</p> <p>21 assistance.</p> <p>22 Q Okay. You mentioned the word material</p> <p>23 earlier. I know you have been involved with Capital</p> <p>24 Markets for awhile. What does the word material</p>	<p style="text-align: right;">Page 51</p> <p>1 A Those filings were on behalf of the trust.</p> <p>2 Q The trust. First Marblehead also made</p> <p>3 filings; for example, 10K's, things like that?</p> <p>4 A Correct.</p> <p>5 Q And the filings on behalf of the First</p> <p>6 Marblehead Corporation were directed to the</p> <p>7 shareholders and potential purchasers of First</p> <p>8 Marblehead stock?</p> <p>9 A Equity. Correct.</p> <p>10 Q And the filings on behalf of the trust</p> <p>11 were directed to the owners of the asset backed</p> <p>12 securities?</p> <p>13 A Fundamentally, yes.</p> <p>14 Q And also to the potential purchasers of</p> <p>15 the asset backed securities?</p> <p>16 A Correct.</p> <p>17 Q Essentially to advise them of the -- among</p> <p>18 other things -- risks associated with the</p> <p>19 investment?</p> <p>20 A Correct.</p> <p>21 Q What is your understanding of why risk</p> <p>22 factors are supposed to be disclosed?</p> <p>23 MR. FONTINELLI: Object to the form.</p> <p>24 THE WITNESS: To give the investor an</p>
<p style="text-align: right;">Page 50</p> <p>1 mean to you?</p> <p>2 A In what context?</p> <p>3 Q In the context of evaluating the credit</p> <p>4 worthiness of an investment?</p> <p>5 A Material means it was a significant factor</p> <p>6 in determining for the rating agencies a rating and</p> <p>7 then for the debt investor's ability to purchase.</p> <p>8 Q Was the TERI guaranty a material advantage</p> <p>9 for first Marblehead's securitization process?</p> <p>10 A Yes.</p> <p>11 Q Was it a substantial --</p> <p>12 A Difference between substantial and</p> <p>13 material?</p> <p>14 Q Was it significant?</p> <p>15 A It was significant.</p> <p>16 Q Mr. Hupalo, was there a specific</p> <p>17 department within First Marblehead that was</p> <p>18 responsible for preparing the SEC filings?</p> <p>19 A The SEC filings were prepared</p> <p>20 by a combination -- the legal department was</p> <p>21 involved. The Capital Market Group would have been</p> <p>22 involved. Others within the finance department.</p> <p>23 Q And those filings were on behalf of First</p> <p>24 Marblehead itself?</p>	<p style="text-align: right;">Page 52</p> <p>1 opportunity to evaluate what the company believes</p> <p>2 were material, significant, consequential, potential</p> <p>3 risks of why that investment may or may not return</p> <p>4 -- have a positive return for the investor. Or in</p> <p>5 the case of a debt holder what they needed to know</p> <p>6 to make a judgment about the likelihood of the</p> <p>7 return of P&I on their investment.</p> <p>8 (Exhibit No. 1, Term Sheet, marked for</p> <p>9 identification.)</p> <p>10 MR. FREIBERG: Hey, Chris. I had a copy</p> <p>11 here for you -- actually, hold on one second, Chris.</p> <p>12 MR. FONTINELLI: Sure.</p> <p>13 MR. FREIBERG: What we have marked as</p> <p>14 Exhibit No. 1, and I had a copy here for you, is the</p> <p>15 Term Sheet dated November 27, 2006 for the National</p> <p>16 Collegiate Funding, LLC depositor and sponsor. It</p> <p>17 has got bates Nos. 2006-4 Golden 240 through 319.</p> <p>18 MR. FONTINELLI: Got it. Thank you.</p> <p>19 MR. FIALKOW: Is that copy single sided?</p> <p>20 MR. FREIBERG: It is.</p> <p>21 MR. FIALKOW: Because mine is double.</p> <p>22 MR. FREIBERG: Save some trees.</p> <p>23 MR. FIALKOW: That's fine. I just want to</p> <p>24 make sure we are looking at the same thing.</p>

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<p style="text-align: right;">Page 53</p> <p>1 THE WITNESS: (Witness examines document.)</p> <p>2 Okay. Thank you.</p> <p>3 BY MR. FREIBERG:</p> <p>4 Q Mr. Hupalo, I know you have had a chance</p> <p>5 to take a quick look at that. I am not going to ask</p> <p>6 you about the entirety of the document. But first</p> <p>7 of all, do you recognize what this is?</p> <p>8 A It looks to me like it's a preliminary</p> <p>9 offering statement for the NCLST 2006-4.</p> <p>10 Q And by offering statement what do you</p> <p>11 mean?</p> <p>12 A Preliminary prospectus.</p> <p>13 Q A prospectus to disclose to potential</p> <p>14 purchasers of the debt securities what the debt</p> <p>15 securities were?</p> <p>16 A That's right.</p> <p>17 Q If you take a look at the very second page</p> <p>18 of the document --</p> <p>19 A (Witness complies.)</p> <p>20 Q By the way, in your role with Capital</p> <p>21 Markets did you have some responsibility for</p> <p>22 preparing preliminary prospectuses?</p> <p>23 A I would have been involved with reviewing</p> <p>24 the document. That's right.</p>	<p style="text-align: right;">Page 55</p> <p>1</p> <p>2 A Okay. Good. So the credit enhancement in</p> <p>3 this case is the amount of money that would be</p> <p>4 available to the senior note holders in the case of</p> <p>5 a shortage of principle or -- or a shortage of cash</p> <p>6 to pay the principle and interest when the bond was</p> <p>7 due?</p> <p>8 Q You are referring to the subordination of</p> <p>9 certain classes of notes?</p> <p>10 A Certain -- that's correct. So the senior</p> <p>11 note holder in this case, Class A, would -- Class A</p> <p>12 at least 8th, 1-4, I don't remember about the IO</p> <p>13 specifically, but they would have the ability to be</p> <p>14 paid in front of the Class B, C, and D note holders.</p> <p>15 Q And that was one of the credit</p> <p>16 enhancements for this -- for these securities?</p> <p>17 A For the senior securities. That's</p> <p>18 correct.</p> <p>19 Q But generally speaking what is a credit</p> <p>20 enhancement when you disclose that in a prospectus?</p> <p>21 A It's all -- I'll say all other assets that</p> <p>22 were available for the payment of -- or the</p> <p>23 potential payment of principle and interest beyond</p> <p>24 the income stream from the loans.</p>
<p style="text-align: right;">Page 54</p> <p>1 Q So on the second page it has -- right up</p> <p>2 at the top there is a couple bullet points. First</p> <p>3 is the classes of the notes listed in the table</p> <p>4 below. Those are the debt securities themselves?</p> <p>5 A Are we looking at this page?</p> <p>6 Q Yes.</p> <p>7 A Yes. Okay. Good. Yes.</p> <p>8 Q So the securities being offered are the</p> <p>9 debt securities, the notes?</p> <p>10 A Correct. Class A1 notes through D.</p> <p>11 Q And they are backed by the private student</p> <p>12 loans guaranteed by the Educational Resources --</p> <p>13 Educational Resources, Inc.?</p> <p>14 A Correct.</p> <p>15 Q And again, all the private student loans</p> <p>16 that were in the trust were guaranteed by TERI?</p> <p>17 A Yes.</p> <p>18 Q Okay. And then there is a section</p> <p>19 entitled Credit Enhancement. First of all, what is a</p> <p>20 credit enhancement?</p> <p>21 A Can I see that --</p> <p>22 Q It's --</p> <p>23 A Credit. Okay.</p> <p>24 Q Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q And there are four credit enhancements</p> <p>2 that are listed here.</p> <p>3 A Correct.</p> <p>4 Q The first one is excess interest on the</p> <p>5 student loans. What does that mean?</p> <p>6 A That just means that, you know, for an</p> <p>7 example if I had an asset that bore 10 percent and I</p> <p>8 had a debt security at 5 percent, and other</p> <p>9 servicing costs of 3 percent that would give me 2</p> <p>10 percent excess interest.</p> <p>11 Q Essentially the spread between the</p> <p>12 underlying asset's interest rate and the debt</p> <p>13 securities interest rate?</p> <p>14 A Debt securities plus servicing costs and</p> <p>15 the rest; correct.</p> <p>16 Q And then the second credit enhancement is</p> <p>17 the subordination that you were just mentioning?</p> <p>18 A Correct.</p> <p>19 Q The third is the reserve account. Do you</p> <p>20 know what that is?</p> <p>21 A Cash funded account established at the</p> <p>22 time of the securization for the benefit of the bond</p> <p>23 holders.</p> <p>24 Q Established by who?</p>

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<p style="text-align: right;">Page 57</p> <p>1 A By the trust.</p> <p>2 Q Where did the cash come from?</p> <p>3 A Proceeds of the transaction.</p> <p>4 Q Did the reserve account include any cash</p> <p>5 from TERI?</p> <p>6 A I don't believe so.</p> <p>7 Q Okay. And then the final one is the</p> <p>8 Education Resources, Inc.'s guaranty on student</p> <p>9 loans?</p> <p>10 A Correct.</p> <p>11 Q Is the credit enhancement from TERI</p> <p>12 considered an external credit enhancement? Are you</p> <p>13 familiar with the difference between an internal and</p> <p>14 an external credit enhancement?</p> <p>15 A If we agree that internal credit</p> <p>16 enhancement comes from within the transaction. And</p> <p>17 this came away from the transaction externally.</p> <p>18 Then yes, TERI would be an external.</p> <p>19 Q Would you agree with me that an external</p> <p>20 credit enhancement is designed to ensure that the</p> <p>21 asset backed securities or pool assets will pay in</p> <p>22 accordance with the terms of the notes themselves?</p> <p>23 MR. FIALKOW: Objection. You can answer.</p> <p>24 MR. FONTINELLI: Objection to form.</p>	<p style="text-align: right;">Page 59</p> <p>1 A Correct.</p> <p>2 Q Credit enhancements can come in the form</p> <p>3 of letters and credit?</p> <p>4 A Correct.</p> <p>5 Q Or guaranties?</p> <p>6 A Correct.</p> <p>7 Q In your experience in the capital markets</p> <p>8 world is bond insurance typically offered by for</p> <p>9 profit corporations or companies? For example,</p> <p>10 AMBACK?</p> <p>11 A When you say typically, I mean, it was --</p> <p>12 it was a regular mechanism in the student loan asset</p> <p>13 backed securities market. It was a known and I will</p> <p>14 say fairly typical, although not -- I don't know</p> <p>15 what the proportions were, but it was known in the</p> <p>16 assets backed securities market.</p> <p>17 Q Bond insurance?</p> <p>18 A Correct.</p> <p>19 Q Is there something called pool insurance?</p> <p>20 A I am not sure I understand that term.</p> <p>21 Q But typically entities that offer bond</p> <p>22 insurance are for profit businesses?</p> <p>23 MR. FONTINELLI: Objection.</p> <p>24 THE WITNESS: I would imagine. I'm not --</p>
<p style="text-align: right;">Page 58</p> <p>1 THE WITNESS: I agree that the guaranty</p> <p>2 was available because of the way -- the way the</p> <p>3 mechanism worked, which is when the loan defaulted.</p> <p>4 Then TERI would repurchase that loan and the cash</p> <p>5 would come into the trust.</p> <p>6 BY MR. FREIBERG:</p> <p>7 Q Okay. A credit enhancement is designed to</p> <p>8 enhance the likelihood that the purchasers of the --</p> <p>9 A Notes are going to receive full benefit.</p> <p>10 Q Okay. The purchasers of the asset backed</p> <p>11 securities?</p> <p>12 A Correct.</p> <p>13 Q That they are going to receive regular and</p> <p>14 -- regular payments of the principle and interest</p> <p>15 from their investments?</p> <p>16 A Correct.</p> <p>17 Q Okay. Was the credit enhancement designed</p> <p>18 to make the debt securities more attractive to</p> <p>19 investors?</p> <p>20 A Yes.</p> <p>21 Q And external credit enhancements can come</p> <p>22 in the form of like bond insurance?</p> <p>23 A Yes.</p> <p>24 Q For example, AMBACK?</p>	<p style="text-align: right;">Page 60</p> <p>1 I am not sure what the differentiate -- as opposed</p> <p>2 to a not for profit?</p> <p>3 BY MR. FREIBERG:</p> <p>4 Q Correct.</p> <p>5 A I don't know why a not for profit would</p> <p>6 offer bonds --</p> <p>7 Q Wouldn't offer bond bond insurance.</p> <p>8 That's what I am getting at. Let me so we are very</p> <p>9 clear.</p> <p>10 A Uh-huh.</p> <p>11 Q Is it your understanding that typically</p> <p>12 companies that offer bond insurance, insurance to</p> <p>13 ensure bonds, are for private businesses? For</p> <p>14 profit businesses? Excuse me.</p> <p>15 A The bond insurers themselves are for</p> <p>16 profit businesses, yes.</p> <p>17 Q And typically entities that offer letters</p> <p>18 of credit are for profit businesses; correct?</p> <p>19 A Yes.</p> <p>20 Q Such as banks?</p> <p>21 A Yes.</p> <p>22 Q Typically -- strike the question.</p> <p>23 In your experience, was TERI the only not</p> <p>24 for profit business that guaranteed student loans?</p>

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<p style="text-align: right;">Page 61</p> <p>1 MR. FONTINELLI: Objection.</p> <p>2 THE WITNESS: At that point they may have</p> <p>3 been. They probably were.</p> <p>4 BY MR. FREIBERG:</p> <p>5 Q The only not for profit --</p> <p>6 A There was another not for profit as I</p> <p>7 recall called Hemar Insurance Corporation of America</p> <p>8 in the 90's into early 2000's. Sallie Mae purchased</p> <p>9 them at some point. So I don't know what -- I don't</p> <p>10 remember the timing of the overlap. But at that</p> <p>11 point I believe TERI was, if not the only, the</p> <p>12 predominant issuer of student loan guaranties for</p> <p>13 private credit loans.</p> <p>14 Q Okay. And the loans that ended up in the</p> <p>15 trust were not backed or enhanced by any letters of</p> <p>16 credit; is that right?</p> <p>17 A That's correct.</p> <p>18 Q And there was no bond insurance that</p> <p>19 enhanced the credit of the loans?</p> <p>20 A No bond insurance on the loans; that's</p> <p>21 correct.</p> <p>22 Q No corporate guaranties?</p> <p>23 A That's correct. With the potential</p> <p>24 exception of some of the -- and I don't think this</p>	<p style="text-align: right;">Page 63</p> <p>1 A From the perspective that they provided</p> <p>2 the guaranty that allowed them to securitize the</p> <p>3 loans and generate revenue, yes.</p> <p>4 Q Was TERI compensated in anyway for</p> <p>5 providing the credit enhancement?</p> <p>6 A They received a guaranty.</p> <p>7 Q And the residuals that we talked about</p> <p>8 earlier was that in anyway compensation for TERI</p> <p>9 providing the credit enhancement?</p> <p>10 A I don't believe so. And I say that only</p> <p>11 because when I looked here and saw depositor and</p> <p>12 sponsor I realized I didn't remember all the terms</p> <p>13 quite right either. But I don't believe that they</p> <p>14 were beneficiaries of the residual.</p> <p>15 Q Was -- other than the guaranty fee TERI</p> <p>16 paid it all for providing the credit enhancement?</p> <p>17 A Not that I remember.</p> <p>18 Q And did the disclosure that we are looking</p> <p>19 at here -- and this is for the 2006-4 trust, did the</p> <p>20 credit enhancement apply to all of the trusts that</p> <p>21 were formed to hold the private student loans</p> <p>22 guarantied by TERI?</p> <p>23 MR. FONTINELLI: Objection.</p> <p>24 THE WITNESS: You said the credit --</p>
<p style="text-align: right;">Page 62</p> <p>1 is the subject of this. It might be out of scope.</p> <p>2 But the gate loans were contingent liabilities for</p> <p>3 some of the colleges that were participating in the</p> <p>4 program. But those loans would not have been</p> <p>5 included that I remember in the National Collegiate</p> <p>6 student loan series.</p> <p>7 Q And the loans that ended up in the trust</p> <p>8 -- I may have asked you this earlier. I apologize</p> <p>9 if I did -- weren't guarantied by any state or</p> <p>10 federal --</p> <p>11 A That's correct.</p> <p>12 Q -- agency? Was the TERI guaranty a</p> <p>13 material aspect to enhancing the credit of the asset</p> <p>14 backed securities?</p> <p>15 A I think we said before it was, yes.</p> <p>16 Q Was the -- was TERI a significant external</p> <p>17 credit enhancement provider?</p> <p>18 A For the same reason because they provided</p> <p>19 the guaranty.</p> <p>20 Q Was TERI's credit enhancement material to</p> <p>21 you personally?</p> <p>22 A No.</p> <p>23 Q Was TERI's credit enhancement material to</p> <p>24 First Marblehead?</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. FREIBERG:</p> <p>2 Q The credit enhancement. Let me rephrase</p> <p>3 the question.</p> <p>4 Did the disclosures for the other trusts,</p> <p>5 other than the 2006-4, did they generally list the</p> <p>6 TERI guaranty as a credit enhancement?</p> <p>7 MR. FONTINELLI: Object to foundation.</p> <p>8 THE WITNESS: Yes. Assuming that the</p> <p>9 loans were TERI guarantied they would have, yes.</p> <p>10 BY MR. FREIBERG:</p> <p>11 Q So the -- when you were preparing the</p> <p>12 disclosures for all of the trusts, generally</p> <p>13 speaking, the TERI guarantee was listed as a credit</p> <p>14 enhancement?</p> <p>15 A Correct.</p> <p>16 Q Are you familiar with the term significant</p> <p>17 obligor?</p> <p>18 A Can you refresh my memory?</p> <p>19 Q Sure. If you --</p> <p>20 (Exhibit No. 2, Form 10D, marked for</p> <p>21 identification.)</p> <p>22 BY MR. FREIBERG:</p> <p>23 Q I will show you what we will mark as</p> <p>24 Exhibit No. 2.</p>

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<p style="text-align: right;">Page 65</p> <p>1 A Thank you. (Witness examines document.)</p> <p>2 MR. FREIBERG: And, Chris, while Mr.</p> <p>3 Hupalo is looking through that, this is the Form 10D</p> <p>4 for the National Collegiate Student Loan Trust</p> <p>5 2006-4. It bears bates Nos. 2006-4 Golden 960</p> <p>6 through 1000.</p> <p>7 MR. FONTINELLI: Got it. Thank you.</p> <p>8 BY MR. FREIBERG:</p> <p>9 Q Mr. Hupalo, what we are looking at now,</p> <p>10 Exhibit No. 2, is a Form 10B for the period between</p> <p>11 December 7th, 2006 and February 25th, 2007.</p> <p>12 First of all, on the third page I notice</p> <p>13 it was signed by Rosalyn Bonaventure?</p> <p>14 A That's right.</p> <p>15 Q And who was she?</p> <p>16 A She was the president of First Marblehead</p> <p>17 Data Services, Inc., which was the business unit at</p> <p>18 First Marblehead that was responsible for keeping</p> <p>19 track of all of the trust data and information and</p> <p>20 compiling these reports.</p> <p>21 Q Reports to file with the Securities and</p> <p>22 Exchange Commission?</p> <p>23 A That's correct.</p> <p>24 Q Why was First Marblehead Data Services,</p>	<p style="text-align: right;">Page 67</p> <p>1 Q And then there is Part II, other</p> <p>2 information. What I would like to ask you about is</p> <p>3 Item No. 6 --</p> <p>4 A Okay.</p> <p>5 Q -- where it says significant obligors of</p> <p>6 pool assets.</p> <p>7 A Okay. Go ahead.</p> <p>8 Q So back to my initial question, can you</p> <p>9 tell us what you understand to be a significant</p> <p>10 obligor of pool assets?</p> <p>11 MR. FIALKOW: Objection. You can answer</p> <p>12 if you know.</p> <p>13 THE WITNESS: In this exhibit Item VI,</p> <p>14 what page would that be on? It's TERI's financial</p> <p>15 statement so I would take it to mean significant</p> <p>16 obligor's was the result of them providing the</p> <p>17 guaranty to the loans.</p> <p>18 So it would be, as you said before, a</p> <p>19 material consideration in funding the pool. So they</p> <p>20 would be obligor's of the underlying pool assets as</p> <p>21 a guarantor.</p> <p>22 BY MR. FREIBERG:</p> <p>23 Q TERI was an obligor of the pool assets</p> <p>24 itself? Meaning TERI -- I am going to use this word</p>
<p style="text-align: right;">Page 66</p> <p>1 Inc. responsible for compiling filings -- preparing</p> <p>2 and compiling filings for the trusts?</p> <p>3 MR. FONTINELLI: Objection. Foundation.</p> <p>4 THE WITNESS: You are handing me this</p> <p>5 document, sir, to answer my request to be refreshed</p> <p>6 about significant obligor --</p> <p>7 BY MR. FREIBERG:</p> <p>8 Q Uh-huh.</p> <p>9 A Could you -- could we go through that</p> <p>10 first?</p> <p>11 Q Sure. Of course.</p> <p>12 A It might have something to do with this.</p> <p>13 Q If you look -- first of all, do you -- can</p> <p>14 you tell us what the purpose of a Form 10D -- a</p> <p>15 distribution report is?</p> <p>16 A Yes. So that the asset backed securities</p> <p>17 holders and others could see how the performance of</p> <p>18 the trust was -- was going.</p> <p>19 Q And if you look at the third page of this</p> <p>20 document, there are two parts. Part I is</p> <p>21 distribution information. And I understand that</p> <p>22 there is financial information that shows</p> <p>23 distributions.</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 68</p> <p>1 a little loosely -- owed something to the pool</p> <p>2 assets by virtue of the guaranty?</p> <p>3 MR. FIALKOW: Objection.</p> <p>4 MR. FONTINELLI: Objection.</p> <p>5 THE WITNESS: If there was a default.</p> <p>6 BY MR. FREIBERG:</p> <p>7 Q And you said a second ago, material</p> <p>8 consideration for funding the pool assets. What did</p> <p>9 you mean by that?</p> <p>10 A What we had described before that it was</p> <p>11 one of the criteria or evaluation factors by the</p> <p>12 rating agencies and investors.</p> <p>13 Q The TERI guarantee?</p> <p>14 A Correct.</p> <p>15 Q But it was material?</p> <p>16 A Correct.</p> <p>17 Q And I guess the question I am struggling</p> <p>18 with is why was TERI considered a significant</p> <p>19 obligor of the trust assets?</p> <p>20 MR. FIALKOW: Objection. You can answer.</p> <p>21 THE WITNESS: Because of the underlying</p> <p>22 guarantee.</p> <p>23 BY MR. FREIBERG:</p> <p>24 Q And because it was a significant obligor</p>

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<p style="text-align: right;">Page 69</p> <p>1 the trusts themselves were required to disclose</p> <p>2 TERI's financial statements --</p> <p>3 A Correct.</p> <p>4 Q -- in the SEC filings. And was that</p> <p>5 across the board for all of the trusts?</p> <p>6 A It would be the same for all the trusts.</p> <p>7 Q If you could -- going back to what we were</p> <p>8 speaking about a moment ago. First Marblehead Data</p> <p>9 Services, Inc. had some role in compiling the</p> <p>10 disclosures, the SEC disclosures for the trusts</p> <p>11 themselves?</p> <p>12 A Correct.</p> <p>13 Q Why was that?</p> <p>14 A If I am recalling correctly they were</p> <p>15 obligated by contract to do that as one of the</p> <p>16 services -- one of the services required to maintain</p> <p>17 the -- to have a publicly registered security.</p> <p>18 Q But why was First Marblehead Data Services</p> <p>19 doing it as opposed to someone else?</p> <p>20 MR. FIALKOW: Objection. You just asked</p> <p>21 him that question.</p> <p>22 THE WITNESS: Again, I think it was as a</p> <p>23 result of the full package of services.</p> <p>24 BY MR. FREIBERG:</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. FONTINELLI: Objection.</p> <p>2 THE WITNESS: There is a calculation known</p> <p>3 as the parity ratio which was assets divided by</p> <p>4 liabilities. And for the purpose of that ratio I</p> <p>5 don't recall if it was included or not.</p> <p>6 BY MR. FREIBERG:</p> <p>7 Q The money in the TERI pledge fund, whose</p> <p>8 money was that?</p> <p>9 A TERI's money.</p> <p>10 Q And it was pledged by TERI to the trusts?</p> <p>11 A Correct.</p> <p>12 Q To -- against potential defaults by the</p> <p>13 borrowers?</p> <p>14 A In effect, that was the guaranty.</p> <p>15 Q Why is the TERI pledge fund, which</p> <p>16 consisted of TERI money, listed in the asset and</p> <p>17 liability summary for the trusts?</p> <p>18 A Because when the -- I would imagine in the</p> <p>19 offering document there was a similar disclosure</p> <p>20 saying that this amount would be pledged to the</p> <p>21 trust.</p> <p>22 Q And did the trust have an actual financing</p> <p>23 statement or security interest in the TERI pledge</p> <p>24 fund?</p>
<p style="text-align: right;">Page 70</p> <p>1 Q If you could go to the page on the bottom</p> <p>2 there are numbers?</p> <p>3 A Yes.</p> <p>4 Q Go to 965.</p> <p>5 A (Witness complies.)</p> <p>6 Q And if I am understanding this correctly</p> <p>7 this is a -- I guess you could say a financial</p> <p>8 statement for the trust itself on this page.</p> <p>9 A Correct.</p> <p>10 Q And it has an asset and liability summary?</p> <p>11 A That's right.</p> <p>12 Q Under Section B --</p> <p>13 A Yes.</p> <p>14 Q There is a category of trust accounts and</p> <p>15 TERI pledge fund.</p> <p>16 A Correct.</p> <p>17 Q No. 4 is listed as a TERI pledge fund.</p> <p>18 A Correct.</p> <p>19 Q What was the TERI pledge fund?</p> <p>20 A As I remember it, that would have been the</p> <p>21 amount of TERI assets that are pledged to potential</p> <p>22 defaults against this pool.</p> <p>23 Q And was the TERI pledge fund considered an</p> <p>24 asset of the trusts?</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. FONTINELLI: Objection.</p> <p>2 THE WITNESS: I would believe it did but I</p> <p>3 don't recall specifically. I would think so.</p> <p>4 BY MR. FREIBERG:</p> <p>5 Q Who held the TERI Pledge Fund?</p> <p>6 A TERI.</p> <p>7 Q Because the TERI guaranty was considered a</p> <p>8 material consideration for the pool of assets --</p> <p>9 just so we can kind of short circuit this -- that's</p> <p>10 why a lot of the trusts disclosures had to disclose</p> <p>11 TERI's financials?</p> <p>12 A Correct.</p> <p>13 Q So that investors looking to buy the debt</p> <p>14 securities would know about TERI's financial</p> <p>15 condition?</p> <p>16 A Correct.</p> <p>17 Q I am going to ask you to take a look at</p> <p>18 the page that at the bottom is designated 978, is</p> <p>19 the number that appears down there.</p> <p>20 A Okay.</p> <p>21 Q And these are what we are looking at the</p> <p>22 financial statements for TERI itself. They were</p> <p>23 included in the trust disclosure?</p> <p>24 A Correct.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q I am going to ask you real quick about the</p> <p>2 category in the assets column that speaks of the</p> <p>3 residual interest in the securitized portfolios.</p> <p>4 A Okay.</p> <p>5 Q And I guess my question is, how did --</p> <p>6 well, first of all, did all of the trusts that held</p> <p>7 the private student loans provide for TERI to have a</p> <p>8 residual interest in the securitized portfolios?</p> <p>9 MR. FONTINELLI: Objection.</p> <p>10 THE WITNESS: As I said before, I didn't</p> <p>11 recall whether there was a -- whether they held a</p> <p>12 residual interest or not, but this tells me that</p> <p>13 they did.</p> <p>14 BY MR. FREIBERG:</p> <p>15 Q And the residual interest that TERI held</p> <p>16 was the same thing that First Marblehead had?</p> <p>17 Essentially an interest in the remainder of the</p> <p>18 trust after everything had run off?</p> <p>19 MR. FIALKOW: Objection. You can answer.</p> <p>20 THE WITNESS: Correct.</p> <p>21 BY MR. FREIBERG:</p> <p>22 Q What was the residual interest being</p> <p>23 provided to TERI? What was that compensation for?</p> <p>24 A Well, as I said before, I didn't recall</p>	<p style="text-align: right;">Page 75</p> <p>1 significant impact on the financial condition of the</p> <p>2 trusts themselves?</p> <p>3 MR. FONTINELLI: Objection. Form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. FREIBERG: Want to take a quick break?</p> <p>6 MR. FONTINELLI: Sure. Quick break</p> <p>7 because you are regrouping or like winding up?</p> <p>8 MR. FREIBERG: I'm regrouping.</p> <p>9 MR. FONTINELLI: Okay. Got it.</p> <p>10 (Recess.)</p> <p>11 BY MR. FREIBERG:</p> <p>12 Q Mr. Hupalo --</p> <p>13 A Hupalo.</p> <p>14 Q -- I know you came to First Marblehead in</p> <p>15 2003.</p> <p>16 A Correct.</p> <p>17 Q After the transaction between TERI and</p> <p>18 First Marblehead.</p> <p>19 A Correct.</p> <p>20 Q Did you ever have an opportunity to look</p> <p>21 or to see the transactional documents?</p> <p>22 A I don't remember seeing them.</p> <p>23 Q Okay.</p> <p>24 MR. FREIBERG: What I might do, David,</p>
<p style="text-align: right;">Page 74</p> <p>1 that they received a residual interest so I don't</p> <p>2 have any recollection of what it was meant to be.</p> <p>3 Q So you can't tell us why TERI got the</p> <p>4 residual interest in the trust?</p> <p>5 MR. FONTINELLI: Objection.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. FREIBERG:</p> <p>8 Q Okay. Would it be fair to state that</p> <p>9 TERI's financial condition had a significant impact</p> <p>10 on the credit worthiness of the debt securities</p> <p>11 issued by the trusts?</p> <p>12 A Yes.</p> <p>13 Q Would it be fair to state that TERI's</p> <p>14 financial condition had a material effect on the</p> <p>15 credit worthiness of the debt securities issued by</p> <p>16 the trust?</p> <p>17 A Yes, from the perspective of rating</p> <p>18 agencies considered it to be a material factor as we</p> <p>19 talked about before.</p> <p>20 Q The ratings provided by the rating</p> <p>21 agencies are used -- looked at by investors?</p> <p>22 A The debt investors; correct.</p> <p>23 Q The debt investors. Would it be fair to</p> <p>24 state that TERI's financial condition had a</p>	<p style="text-align: right;">Page 76</p> <p>1 rather than asking him about a bunch of documents</p> <p>2 that he has never seen, we can just go ahead and</p> <p>3 mark them as exhibits to the deposition?</p> <p>4 MR. FONTINELLI: You can do whatever you</p> <p>5 like.</p> <p>6 MR. FREIBERG: Okay. With that what I</p> <p>7 would like to do is to mark as Exhibit No. 3 the</p> <p>8 Master Loan Guaranty Agreement between the First</p> <p>9 Marblehead Corporation and Education Resources, Inc.</p> <p>10 Chris, for your purposes, this is bates</p> <p>11 Nos. FM-Golden 61 through 173.</p> <p>12 (Exhibit No. 3, Master Loan Guaranty</p> <p>13 Agreement, First Marblehead Corporation and</p> <p>14 Education Resources, Inc., marked for</p> <p>15 identification.)</p> <p>16 Exhibit No. 4 will be the Database Sale</p> <p>17 and Supplementation Agreement. And this is bates</p> <p>18 Nos. FM-Golden 43 through 60.</p> <p>19 (Exhibit No. 4, Database Sale and</p> <p>20 Supplementation Agreement, marked for</p> <p>21 identification.)</p> <p>22 Exhibit No. 5 will be the Marketing</p> <p>23 Services Agreement. And this is bates Nos.</p> <p>24 FM-Golden 174 through 198.</p>

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<p style="text-align: right;">Page 77</p> <p>1 (Exhibit No. 5, Marketing Services 2 Agreement, marked for identification.) 3 And, lastly will be the Master Service 4 Agreement between TERI and the First Marblehead 5 Corporation. This will be Exhibit No. 6 6 and it's bate Nos. FM-Golden 6 through 42. 7 MR. FONTINELLI: What was that again? 8 MR. FREIBERG: 6 through 42. 9 MR. FONTINELLI: Thank you. 10 (Exhibit No. 6, Master Service Agreement, 11 TERI and First Marblehead Corporation, marked for 12 identification.) 13 (Discussion off the record.) 14 BY MR. FREIBERG: 15 Q Mr. Hupalo, are you familiar at all with 16 the Master Loan Guaranty Agreement between TERI and 17 First Marblehead? 18 A Other than just hearing of it now and then 19 recalling that there was an agreement in place to 20 have that agreement in place, yes. 21 Q And is it your understanding that First 22 Marblehead agreed to create a market for its private 23 labeled clients to sell TERI guaranteed loans and 24 this is part of the transaction that happened in</p>	<p style="text-align: right;">Page 79</p> <p>1 question -- to your questions reflected what I 2 thought that document might say rather than what I 3 know it says. 4 Q The two items that I was going to ask you 5 about from the document are the residuals and 6 whether you could explain to us how the Master Loan 7 Guaranty Agreement set up the process by which TERI 8 would receive residuals in the trust? 9 THE WITNESS: I could not do that. 10 MR. FONTINELLI: Objection. 11 MR. FREIBERG: If you heard his answer, he 12 said he couldn't explain that to us. 13 MR. FONTINELLI: I'm sorry about that. 14 MR. FREIBERG: No worries. 15 BY MR. FREIBERG: 16 Q Do you have any understanding of how the 17 guaranty fees that TERI was earning how -- what the 18 structure was or the mechanics were how those 19 guaranty fees were pledged to the trusts? 20 A The mechanism that was used? 21 Q Yes. 22 A I don't know. 23 Q Do you know whether or not the guaranty 24 fees that TERI earned were held in segregated</p>
<p style="text-align: right;">Page 78</p> <p>1 2001? 2 A Uh-huh. 3 Q You have to say yes or no. 4 A Yes. 5 Q Okay. And that First Marblehead agreed to 6 cause securitizations of the TERI guaranteed loans? 7 A Yes. 8 A Yes. 9 Q And the Master Loan Guaranty Agreement was 10 intended to create a framework for structuring 11 future relationships between TERI, First Marblehead 12 and the bank lenders? 13 A And I am saying yes because I assume by 14 the title of that document that is what it was 15 created to do. I have no -- 16 MR. FIALKOW: I am just going to -- if you 17 -- if you don't have a recollection or know the 18 answer I think that you should state that. But 19 don't make assumptions regarding the documents, if 20 you can. 21 BY MR. FREIBERG: 22 Q I would agree with that. 23 A Okay. So I don't have any specific 24 recollection of that document. So the answer to my</p>	<p style="text-align: right;">Page 80</p> <p>1 accounts? 2 A I believe some of them were. 3 Q And were those guaranty fees that TERI 4 received and was paid for the guaranty were they 5 held for the benefit of the program lender? 6 A I saw in some of the documents here and 7 refreshed me that they were. 8 Q Okay. Were they held for the benefit of 9 the trust themselves? 10 MR. FONTINELLI: Objection. 11 THE WITNESS: Based on what I saw here, 12 again, I think that they were. 13 BY MR. FREIBERG: 14 Q And those funds were essentially, as you 15 said earlier, pledged to the trust? 16 A Correct. 17 Q Do you know what the nature of the pledge 18 was? 19 A When you say nature of the pledge the -- 20 Q What was the purpose of the pledge? 21 A The purpose of a pledge would have been to 22 let the bondholders, the rating agencies and others 23 know that there was cash available to make good on 24 the TERI guaranty.</p>

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<p style="text-align: right;">Page 81</p> <p>1 Q And the TERI pledge fund, do you know</p> <p>2 whether or not, other than what we looked at earlier</p> <p>3 was it listed as an asset on the financial</p> <p>4 statements for the trusts themselves?</p> <p>5 MR. FONTINELLI: Objection.</p> <p>6 THE WITNESS: In the document it was.</p> <p>7 BY MR. FREIBERG:</p> <p>8 Q The pledge fund did not consist of money</p> <p>9 from the banks?</p> <p>10 A The pledge fund as I remember it and</p> <p>11 refreshed by the documents was cashed from TERI.</p> <p>12 Q Who owned or kept the interest on those</p> <p>13 pledge funds, do you know?</p> <p>14 A I don't know.</p> <p>15 Q Are you familiar at all with the process</p> <p>16 by which First Marblehead purchased TERI's database?</p> <p>17 A Not specifically.</p> <p>18 Q Do you know anything about how First</p> <p>19 Marblehead used the information that was contained</p> <p>20 in TERI's database after the purchase in 2001?</p> <p>21 A When I arrived in 2003, in March or so of</p> <p>22 2003, that was already part of the business of First</p> <p>23 Marblehead. So it was available -- the data would</p> <p>24 have been available for use for underwriting -- for</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. FONTINELLI: Objection. Which data?</p> <p>2 BY MR. FREIBERG:</p> <p>3 Q The data that was purchased by First</p> <p>4 Marblehead from TERI pursuant to the Database Sale</p> <p>5 and Supplementation Agreement?</p> <p>6 MR. FONTINELLI: Objection.</p> <p>7 THE WITNESS: Yes. I am not drawing a</p> <p>8 recollection on how we would have used that -- that</p> <p>9 data. Again, from the capital markets perspective</p> <p>10 what was important to us was that the guaranty was</p> <p>11 in place. And the specific mechanism of that, as you</p> <p>12 can hear from me, I'm not recalling in detail.</p> <p>13 BY MR. FREIBERG:</p> <p>14 Q I understand this may have been out of</p> <p>15 your department, but between 2002 and 2008 was TERI</p> <p>16 paying First Marblehead to perform administrative</p> <p>17 services?</p> <p>18 A Again, I am not recalling that. But I</p> <p>19 think there was a document that said there was an</p> <p>20 agreement so, yes.</p> <p>21 Q Between 2001 and 2008 what was First</p> <p>22 Marblehead's revenue trajectory, I guess you could</p> <p>23 say? Did the revenue increase every year?</p> <p>24 A It was upward sloping.</p>
<p style="text-align: right;">Page 82</p> <p>1 suggesting underwriting criteria and the like.</p> <p>2 Q What kind of data was there, do you</p> <p>3 recall?</p> <p>4 A There would have been data about defaults,</p> <p>5 delinquencies on underlying loans that were</p> <p>6 originated from whatever the purchase period was.</p> <p>7 Q Did the data include credit scores,</p> <p>8 borrower credit information?</p> <p>9 A I don't recall that.</p> <p>10 Q Did it include loan payment histories,</p> <p>11 statistics, things like that?</p> <p>12 A I don't recall specifically.</p> <p>13 Q Do you know how many years of data there</p> <p>14 were that was purchased by First Marblehead?</p> <p>15 A I don't.</p> <p>16 Q And why was the data that it purchased</p> <p>17 from TERI important to First Marblehead?</p> <p>18 MR. FONTINELLI: Objection.</p> <p>19 THE WITNESS: Yes. Again, I would be</p> <p>20 speculating if I answer that question.</p> <p>21 BY MR. FREIBERG:</p> <p>22 Q Okay. Can you tell us at all how the data</p> <p>23 that First Marblehead purchased from TERI fit into</p> <p>24 the securitization process?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q I'm sorry?</p> <p>2 A It was upward sloping. Yes, it was</p> <p>3 increasing.</p> <p>4 Q And would that include revenue?</p> <p>5 A Total revenue? Yes.</p> <p>6 Q Total revenue. Net income also was --</p> <p>7 A Yes.</p> <p>8 Q -- upward sloping?</p> <p>9 A Yes.</p> <p>10 Q Earnings per share were upward sloping</p> <p>11 during that period of time?</p> <p>12 A Generally. I can't remember quarter to</p> <p>13 quarter, but generally, yes.</p> <p>14 Q And in that period of time did First</p> <p>15 Marblehead issue more than 10 billion dollars in</p> <p>16 asset backed securities?</p> <p>17 MR. FONTINELLI: Objection. Foundation.</p> <p>18 BY MR. FREIBERG:</p> <p>19 Q Good question. Do you recall -- I should</p> <p>20 say good objection -- between 2001 and 2008 what was</p> <p>21 the total amount of asset backed securities that</p> <p>22 were securitized by First Marblehead?</p> <p>23 A I don't recall specifically but 10 billion</p> <p>24 is probably a fairly good ballpark estimate of that.</p>

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<p style="text-align: right;">Page 85</p> <p>1 Q And were all of those loans, all of those</p> <p>2 assets, originated through First Marblehead?</p> <p>3 A Yes.</p> <p>4 Q And were all of those assets comprising</p> <p>5 the 10 billion dollars in securitizations were all</p> <p>6 of those student loans that were guaranteed by TERI?</p> <p>7 A Yes. I think we said that before a couple</p> <p>8 of times.</p> <p>9 Q TERI's not-for-profit status was important</p> <p>10 to First Marblehead; correct?</p> <p>11 A Not-for-profit status? I'm not sure that</p> <p>12 that was important.</p> <p>13 Q Why was TERI -- well, what I am getting at</p> <p>14 is why, if at all, was TERI's not-for-profit status</p> <p>15 important to Marblehead?</p> <p>16 A You are jogging my memory. So as you are</p> <p>17 asking these questions and I'm saying, well, I am</p> <p>18 not sure why you are asking that. And then you ask</p> <p>19 a follow up and then I sort of, okay -- now I know</p> <p>20 where you are coming from.</p> <p>21 So, TERI, if I recall this correctly and</p> <p>22 vaguely, they were empowered as a guarantor source</p> <p>23 under some special provisions that a not-for-profit</p> <p>24 -- that it was required or necessary to have a not</p>	<p style="text-align: right;">Page 87</p> <p>1 not-for-profit status of TERI was relevant somehow</p> <p>2 to dischargeability?</p> <p>3 A It may have been.</p> <p>4 Q OKay. Do you recall, though, in your</p> <p>5 discussions within the Capital Market groups ever</p> <p>6 talking about the not-for-profit status of TERI?</p> <p>7 A No, but I do recall talking about</p> <p>8 non-dischargeability.</p> <p>9 Q Okay. Was the not-for-profit status, to</p> <p>10 your understanding -- how did that effect</p> <p>11 dischargeability? Let's put it that way.</p> <p>12 A Again, I don't specifically recall but I</p> <p>13 sort of vaguely recall that there was some</p> <p>14 permission for not for profits to have some -- I am</p> <p>15 going to say carve out because I just don't think --</p> <p>16 I can't of the right term -- to issue a loan</p> <p>17 guaranty for private credit student loan.</p> <p>18 Q Sir, let me take a step back to the period</p> <p>19 of time between 2003 and 2008. We talked earlier</p> <p>20 about the profitability of First Marblehead</p> <p>21 depending mostly on its securitization processes.</p> <p>22 A That's right.</p> <p>23 Q And would it be fair to state that First</p> <p>24 Marblehead was better able to market the securities,</p>
<p style="text-align: right;">Page 86</p> <p>1 for profit to be able to issue those guaranties.</p> <p>2 Q And do you recall if that had anything to</p> <p>3 do with the dischargeability of the student loans?</p> <p>4 Does that word ring a bell to you; dischargeability?</p> <p>5 A I understand about dischargeability.</p> <p>6 Q What do you understand about</p> <p>7 dischargeability?</p> <p>8 MR. FIALKOW: Objection. To the extent</p> <p>9 that you can answer that question with your own</p> <p>10 knowledge you are free to answer that. To the</p> <p>11 extent you are going to disclose conversations with</p> <p>12 your counsel then I advise you not to --</p> <p>13 BY MR. FREIBERG:</p> <p>14 Q Yes. I don't -- I don't want to hear what</p> <p>15 you may have learned from David or any of the other</p> <p>16 attorneys. But just what your personal</p> <p>17 understanding of dischargeability is.</p> <p>18 A Dischargeability, as I understand it, is</p> <p>19 when you are involved in a bankruptcy proceeding</p> <p>20 what assets, meaning credit cards or mortgages or</p> <p>21 student loans, can be discharged or forgiven or</p> <p>22 relieved or however you want to think about that, or</p> <p>23 not.</p> <p>24 Q And is it your understanding that the</p>	<p style="text-align: right;">Page 88</p> <p>1 the debt securities, because the underlying debt was</p> <p>2 guaranteed by TERI?</p> <p>3 A I believe you asked me before and I said,</p> <p>4 yes.</p> <p>5 Q Before 2001 the guaranties were paid to</p> <p>6 the lending banks. Let me rephrase the question.</p> <p>7 If prior to 2001 a borrower defaulted,</p> <p>8 TERI would pay the guaranty to the bank?</p> <p>9 MR. FIALKOW: Objection. Are you asking</p> <p>10 prior to 2001?</p> <p>11 MR. FONTINELLI: Objection.</p> <p>12 BY MR. FREIBERG:</p> <p>13 Q Yes. If you have any understanding --</p> <p>14 A I don't. I don't know.</p> <p>15 Q While you were there and borrowers</p> <p>16 defaulted the TERI guaranty was paid to the trust?</p> <p>17 A The trust. Correct.</p> <p>18 Q The trusts that were established by First</p> <p>19 Marblehead?</p> <p>20 A Correct.</p> <p>21 Q By the way, sir, who administers the</p> <p>22 trusts, if I could use that word?</p> <p>23 A I think we said before First Marblehead</p> <p>24 Data Services was involved in the administration of</p>

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<p style="text-align: right;">Page 89</p> <p>1 the trust.</p> <p>2 Q Okay. And what is your understanding of</p> <p>3 what First Marblehead Data Services did to</p> <p>4 administer the trust?</p> <p>5 A As we said before, they collected the data</p> <p>6 on performance of the trust, meaning cash flow,</p> <p>7 principle and interest coming in, outflows and then</p> <p>8 reported as we saw on the document on the financial</p> <p>9 status of the trust, assets and liabilities.</p> <p>10 Q Sir, by the way, do you have an</p> <p>11 understanding of the -- whether or not TERI was</p> <p>12 using not-for-profit mailing rates?</p> <p>13 A I have no idea.</p> <p>14 Q Do you know if TERI was authorized for --</p> <p>15 by the United States Postal Service to use</p> <p>16 not-for-profit mailing rates?</p> <p>17 A I don't know.</p> <p>18 Q So we spoke a moment ago about the</p> <p>19 increase in revenue between 2001 and 2008 -- First</p> <p>20 Marblehead revenue.</p> <p>21 A Right. Well, I am going to say this with</p> <p>22 a caveat. Somewhere between 2007 and 2009 the</p> <p>23 revenues declined pretty substantially. So when you</p> <p>24 said '08, the slope may have changed considerably in</p>	<p style="text-align: right;">Page 91</p> <p>1 going to evaporate.</p> <p>2 Q Did the TERI bankruptcy have an immediate</p> <p>3 negative impact on First Marblehead's business?</p> <p>4 MR. FONTINELLI: Objection.</p> <p>5 THE WITNESS: I would say yes.</p> <p>6 BY MR. FREIBERG:</p> <p>7 Q Did the TERI guaranty have an immediate</p> <p>8 negative impact on First Marblehead's relationships</p> <p>9 with its clients, the lending banks?</p> <p>10 A Yes.</p> <p>11 Q And for how long did that negative impact</p> <p>12 last?</p> <p>13 A Well, it was also a combination of the</p> <p>14 fact that the capital markets were beginning to</p> <p>15 fail. So it was both the failure of TERI and also</p> <p>16 the underlying issues within the capital markets</p> <p>17 that was a double whammy for First Marblehead.</p> <p>18 Q You are talking about just the economy --</p> <p>19 A I am talking about the collapse of the</p> <p>20 private -- of the asset backed securities market</p> <p>21 that really began in December of 2007</p> <p>22 Q The collapse of the mortgage backed</p> <p>23 securities market?</p> <p>24 A Of all asset backed securities mortgages</p>
<p style="text-align: right;">Page 90</p> <p>1 the beginning of 2008. I just don't recall when</p> <p>2 that happened.</p> <p>3 Q Maybe the best thing to do is to flip</p> <p>4 right to the TERI bankruptcy. You were still</p> <p>5 employed by First Marblehead when TERI filed</p> <p>6 bankruptcy; is that correct?</p> <p>7 A Do you remember what date that was?</p> <p>8 Q It was in April of 2008.</p> <p>9 A In '08, yes, I was there.</p> <p>10 Q In April 2008 TERI filed for reorganization?</p> <p>11 A Yes.</p> <p>12 Q What was the cause of that, to your</p> <p>13 understanding?</p> <p>14 A At that time their projections for their</p> <p>15 reserve balances was turning negative.</p> <p>16 Q Okay. Was this a concern for First</p> <p>17 Marblehead?</p> <p>18 A Absolutely.</p> <p>19 Q A significant concern?</p> <p>20 A Yes.</p> <p>21 Q A material concern?</p> <p>22 A I would say so.</p> <p>23 Q Why?</p> <p>24 A Because the source of their guaranty was</p>	<p style="text-align: right;">Page 92</p> <p>1 led by the mortgage backs. I say that because it's</p> <p>2 clearly difficult to have both the asset guaranty</p> <p>3 and the takeout market collapse at the same time.</p> <p>4 So when you try to say which is more material, they</p> <p>5 were both equally devastating.</p> <p>6 Q Okay. To First Marblehead?</p> <p>7 A Correct.</p> <p>8 Q Did the TERI bankruptcy have a material</p> <p>9 negative impact on the client relationships that</p> <p>10 First Marblehead had with the banks?</p> <p>11 A Well, this is why I started down the path</p> <p>12 of the collapse of the asset backed securities</p> <p>13 market because they occurred almost simultaneously.</p> <p>14 So there was that news going to the client base. So</p> <p>15 I don't know which was more material to them. But</p> <p>16 they were both significant events.</p> <p>17 Q As a result of the TERI bankruptcy a</p> <p>18 number of the banks terminated their loan programs</p> <p>19 with TERI?</p> <p>20 A That's correct.</p> <p>21 Q Which banks terminated their loan programs</p> <p>22 with TERI?</p> <p>23 A I don't recall specifically which banks</p> <p>24 but there was also, again, this relationship with</p>

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<p style="text-align: right;">Page 93</p> <p>1 Capital Markets.</p> <p>2 Q And at some point First Marblehead was</p> <p>3 unable to securitize any loans. So they were unable</p> <p>4 to make good on their repurchase -- or the purchase</p> <p>5 agreement, if you will, with the banks?</p> <p>6 A So as we said earlier, First Marblehead</p> <p>7 didn't own the loans. The banks did. There was a</p> <p>8 contract -- now that I am thinking this through a</p> <p>9 little bit more -- there was a contract with the</p> <p>10 banks that First Marblehead would repurchase those</p> <p>11 loans in a given period.</p> <p>12 And if they could not make that purchase</p> <p>13 there was -- there was some default provisions. And</p> <p>14 all of that was happening at about the same time, if</p> <p>15 I remember, as the TERI bankruptcy.</p> <p>16 Q Okay. But going back to my question, the</p> <p>17 TERI bankruptcy had an effect on First Marblehead's</p> <p>18 relationship with the banks?</p> <p>19 A Yes.</p> <p>20 Q And one of the results of that was that</p> <p>21 the banks terminated their agreements with TERI --</p> <p>22 A Yes.</p> <p>23 Q -- the guaranty agreements?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: It with the collapse of the</p> <p>2 asset backed securities market were significant</p> <p>3 factors.</p> <p>4 BY MR. FREIBERG:</p> <p>5 Q The TERI bankruptcy decreased First</p> <p>6 Marblehead's ability to access the securitization</p> <p>7 market; is that fair to state?</p> <p>8 A And, again, to draw the line, the market</p> <p>9 was either partially or fully impaired at that</p> <p>10 point. So there wasn't a market to access.</p> <p>11 As a capital markets expert, what you</p> <p>12 would do in that situation if it were literally just</p> <p>13 the TERI guaranty then you would want to go to a</p> <p>14 self-guaranty or some other financing mechanism</p> <p>15 because your business is now dependent on that. And</p> <p>16 that wasn't an option for First Marblehead any</p> <p>17 longer because of the collapse of the asset backed</p> <p>18 securities market.</p> <p>19 Q Do you recall when the last securitization</p> <p>20 was done by First Marblehead of the student loans?</p> <p>21 A I believe it was 2008 --</p> <p>22 Q Okay.</p> <p>23 A -- in the fall perhaps just before I</p> <p>24 left.</p>
<p style="text-align: right;">Page 94</p> <p>1 Q And am I correct that following the TERI</p> <p>2 bankruptcy the loan volume that First Marblehead was</p> <p>3 securitizing dropped dramatically; is it fair to</p> <p>4 state?</p> <p>5 A Again, there was a coincident effect on</p> <p>6 their inability to purchase any loans. So to your</p> <p>7 question, the forward volume was not filling but in</p> <p>8 equal proportion there was an inability to</p> <p>9 securitize loans currently on the bank balance</p> <p>10 sheet.</p> <p>11 So the banks were not in a position to</p> <p>12 originate more loans because they were now out of</p> <p>13 balance sheet capacity to themselves.</p> <p>14 Q Okay.</p> <p>15 A So the whole system just ground to a halt.</p> <p>16 Q But one of the reasons that you say the</p> <p>17 whole system ground to a halt was the fact that</p> <p>18 TERI declared bankruptcy?</p> <p>19 MR. FONTINELLI: Objection.</p> <p>20 THE WITNESS: That was a -- yes.</p> <p>21 BY MR. FREIBERG:</p> <p>22 Q Was that a significant reason why</p> <p>23 everything ground to a halt?</p> <p>24 MR. FONTINELLI: Objection.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q And do you know whether or not after TERI</p> <p>2 filed bankruptcy was First Marblehead ever able to</p> <p>3 engage in other securitizations of student loans?</p> <p>4 A I don't believe they did after that.</p> <p>5 Q Is it fair to state, though, that the TERI</p> <p>6 bankruptcy negatively impacted the number of loans</p> <p>7 available to First Marblehead for securitization? I</p> <p>8 get that there were a lot of things going on --</p> <p>9 A Yes. And I'm -- in the timeframe, I am</p> <p>10 just trying to remember because what happened</p> <p>11 between December 2007 and when I left in October of</p> <p>12 2008 there are many events in two different markets.</p> <p>13 And the exact timing doesn't -- I am not clear on</p> <p>14 what the exact timing was. But the point I am</p> <p>15 trying to make it might not have mattered if TERI's</p> <p>16 guaranty was pristine. There wouldn't have been a</p> <p>17 market to sell those loans into to begin with.</p> <p>18 Q Okay. The bankruptcy, though, obviously</p> <p>19 affected TERI's ability to satisfy its guaranty</p> <p>20 obligations?</p> <p>21 MR. FONTINELLI: Objection.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. FREIBERG:</p> <p>24 Q And that had a negative impact on First</p>

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<p style="text-align: right;">Page 97</p> <p>1 Marblehead's business? It may not have been the</p> <p>2 sole --</p> <p>3 MR. FONTINELLI: Objection.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. FREIBERG:</p> <p>6 Q -- effect but --</p> <p>7 A It had an impact.</p> <p>8 BY MR. FREIBERG:</p> <p>9 Q Would you say that the impact it had was a</p> <p>10 material impact?</p> <p>11 MR. FONTINELLI: Objection.</p> <p>12 THE WITNESS: We said this before,</p> <p>13 significant, material -- yes, it had a -- it had a</p> <p>14 significant impact. But as I also said, if it were</p> <p>15 a singular issue there may have been a way to</p> <p>16 structure around that because of the asset backed</p> <p>17 securities market place collapse that was a double</p> <p>18 whammy.</p> <p>19 BY MR. FREIBERG:</p> <p>20 Q The TERI bankruptcy had an effect on First</p> <p>21 Marblehead's ability to realize the cost of</p> <p>22 reimbursement and the guaranty obligations of TERI,</p> <p>23 obviously?</p> <p>24 MR. FONTINELLI: Objection to form.</p>	<p style="text-align: right;">Page 99</p> <p>1 trusts?</p> <p>2 A The trusts were unlikely to get the</p> <p>3 reimbursement for the defaults that were occurring</p> <p>4 on the portfolios.</p> <p>5 Q Did the TERI bankruptcy have an effect on</p> <p>6 the ratings for the trust?</p> <p>7 MR. FONTINELLI: Objection.</p> <p>8 THE WITNESS: Yes. But, again, in hand</p> <p>9 with the collapse of the underlying securities</p> <p>10 marketplace.</p> <p>11 BY MR. FREIBERG:</p> <p>12 Q How were the ratings for the trust</p> <p>13 affected? Were they downgraded?</p> <p>14 A They would have been downgraded.</p> <p>15 Q Okay. And, again, I understand you can't</p> <p>16 say it's exclusively the TERI bankruptcy that caused</p> <p>17 that. But in your mind was it your understanding</p> <p>18 the TERI bankruptcy had some effect on the</p> <p>19 downgrading of the --</p> <p>20 MR. FONTINELLI: Objection.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. FREIBERG:</p> <p>23 Q Would you say that the TERI bankruptcy had</p> <p>24 a material effect on the ratings for the trusts?</p>
<p style="text-align: right;">Page 98</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. FREIBERG:</p> <p>3 Q How did that effect the trusts?</p> <p>4 MR. FONTINELLI: Objection. Foundation.</p> <p>5 THE WITNESS: I'm sorry. How did the --</p> <p>6 BY MR. FREIBERG:</p> <p>7 Q Okay. So let me step back a second. The</p> <p>8 TERI bankruptcy had a negative impact on First</p> <p>9 Marblehead's ability to realize the cost of</p> <p>10 reimbursement from the guaranty obligation?</p> <p>11 MR. FONTINELLI: Objection. Form.</p> <p>12 THE WITNESS: You said the cost of</p> <p>13 reimbursement?</p> <p>14 BY MR. FREIBERG:</p> <p>15 Q Maybe I should phrase it differently. The</p> <p>16 TERI bankruptcy had a negative impact on First</p> <p>17 Marblehead's ability to realize the guaranty</p> <p>18 obligations of TERI?</p> <p>19 A Correct.</p> <p>20 Q And did that have an impact on the trusts?</p> <p>21 MR. FONTINELLI: Objection.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. FREIBERG:</p> <p>24 Q And what was the impact it had on the</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. FONTINELLI: Objection.</p> <p>2 THE WITNESS: I would say it was</p> <p>3 significant.</p> <p>4 BY MR. FREIBERG:</p> <p>5 Q And the ratings -- the credit ratings for</p> <p>6 First Marblehead, what happened to them after 2008?</p> <p>7 A If I recall correctly, First Marblehead</p> <p>8 was never a rated entity.</p> <p>9 Q Okay. Did the TERI bankruptcy have an</p> <p>10 effect on the stock price for First Marblehead's</p> <p>11 stock?</p> <p>12 A I will say that it was a contributing</p> <p>13 factor, again, in all of the news to the declining</p> <p>14 equity price.</p> <p>15 Q What was the decline in the equity price?</p> <p>16 Was it significant?</p> <p>17 A Material. Significant. Yes.</p> <p>18 Q Would you state that the TERI bankruptcy</p> <p>19 was a materially contributing factor in the decline</p> <p>20 in the equity price for First Marblehead?</p> <p>21 A It's hard for me to say that because I</p> <p>22 don't know precisely why there were so many sellers,</p> <p>23 but there were sellers.</p> <p>24 Q Fair enough. Did the value of the debt</p>

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<p style="text-align: right;">Page 101</p> <p>1 securities -- maybe the -- let's stick with that.</p> <p>2 The value of the debt securities that the trust were</p> <p>3 issuing, did those values decrease after TERI's</p> <p>4 bankruptcy?</p> <p>5 A They would have declined, sure.</p> <p>6 Q Did the TERI bankruptcy have an effect on</p> <p>7 the decrease in the value of the debt securities</p> <p>8 issued by the trust?</p> <p>9 A Yes.</p> <p>10 Q Would you state that that was a material</p> <p>11 effect?</p> <p>12 MR. FONTINELLI: Objection.</p> <p>13 THE WITNESS: My answer is the same as the</p> <p>14 equity. I don't know what caused all the sellers --</p> <p>15 in the equity market there were short sellers which</p> <p>16 drove prices as well. So there were more market</p> <p>17 dynamics then you would have seen in the debt</p> <p>18 securities market then.</p> <p>19 BY MR. FREIBERG:</p> <p>20 Q But we can agree that the TERI bankruptcy</p> <p>21 had an effect that decreased --</p> <p>22 A Yes.</p> <p>23 Q -- the value of the debt securities?</p> <p>24 MR. FONTINELLI: Objection.</p>	<p style="text-align: right;">Page 103</p> <p>1 MR. FONTINELLI: Objection.</p> <p>2 THE WITNESS: To offer guaranties?</p> <p>3 BY MR. FREIBERG:</p> <p>4 Q Yes.</p> <p>5 A Yes.</p> <p>6 Q And is it correct that First Marblehead's</p> <p>7 ability to offer guaranties for student loans was</p> <p>8 never replaced after the TERI bankruptcy?</p> <p>9 A I believe that's true. Although First</p> <p>10 Marblehead in its predecessor company -- successor</p> <p>11 company, rather, I'm sorry, continues to have a</p> <p>12 business.</p> <p>13 Q Did the TERI bankruptcy have an effect on</p> <p>14 First Marblehead's revenues in part because the</p> <p>15 structural advisory fees were no longer available to</p> <p>16 First Marblehead?</p> <p>17 MR. FONTINELLI: Objection.</p> <p>18 THE WITNESS: That's correct.</p> <p>19 BY MR. FREIBERG:</p> <p>20 Q And was that a significant decrease in the</p> <p>21 revenues?</p> <p>22 MR. FONTINELLI: Objection.</p> <p>23 THE WITNESS: As you said before, yes.</p> <p>24 BY MR. FREIBERG:</p>
<p style="text-align: right;">Page 102</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. FREIBERG:</p> <p>3 Q And when I say value -- and this may not</p> <p>4 be the right word -- did the offering price for the</p> <p>5 debt securities decrease after the TERI bankruptcy?</p> <p>6 MR. FONTINELLI: Objection.</p> <p>7 THE WITNESS: Again, for securities that</p> <p>8 were already in the marketplace they would have been</p> <p>9 trading in the secondary market. We wouldn't have</p> <p>10 had any insight into that. For the offering of a</p> <p>11 new securities offering then, obviously, there was a</p> <p>12 question of just access.</p> <p>13 BY MR. FREIBERG:</p> <p>14 Q Mr. Hupalo, how did the TERI bankruptcy</p> <p>15 effect First Marblehead's revenue?</p> <p>16 A As we said before, because of the</p> <p>17 dependence on the guaranty and the other events that</p> <p>18 we have been talking about there was a decline.</p> <p>19 Q A significant decline?</p> <p>20 A Yes, a significant material decline.</p> <p>21 Q Mr. Hupalo, would it be fair to state that</p> <p>22 the TERI bankruptcy resulted in the loss of First</p> <p>23 Marblehead's ability to offer guaranties for student</p> <p>24 loans?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Did the -- as far as you know, did the</p> <p>2 TERI bankruptcy have an effect on the value of the</p> <p>3 residuals in the trust that First Marblehead owned?</p> <p>4 A Yes.</p> <p>5 Q Can you quantify it at all?</p> <p>6 A No, other than it was significant, as with</p> <p>7 the revenue.</p> <p>8 Q The value of the debt securities, as you</p> <p>9 said, they decreased after the TERI bankruptcy. Do</p> <p>10 you know if they have ever recovered?</p> <p>11 A I don't.</p> <p>12 Q After the TERI bankruptcy -- and I</p> <p>13 understand you left shortly -- within the year. Do</p> <p>14 you know whether or not First Marblehead refined or</p> <p>15 changed its business at all?</p> <p>16 A I know anectodally that it did.</p> <p>17 Q Okay. How?</p> <p>18 A That I don't know.</p> <p>19 Q Do you know antidotally whether or not</p> <p>20 First Marblehead uses any guarantor now?</p> <p>21 A I am not familiar with the current</p> <p>22 business model.</p> <p>23 Q Do you know if the business model that</p> <p>24 First Marblehead implemented after the TERI</p>

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<p style="text-align: right;">Page 105</p> <p>1 bankruptcy required a guaranty from third parties</p> <p>2 for its private label loans?</p> <p>3 A I don't know.</p> <p>4 Q Do you know if First Marblehead changed</p> <p>5 its underwriting criteria at all?</p> <p>6 A I don't know.</p> <p>7 Q Sir, were you at all involved in the</p> <p>8 preparation of the 10K's for First Marblehead?</p> <p>9 A Yes.</p> <p>10 MR. FREIBERG: What I am going to do is</p> <p>11 mark as the next exhibit -- it will be the 2006</p> <p>12 Annual Report and 10K.</p> <p>13 (Exhibit No. 7, First Marblehead 2006</p> <p>14 Annual Report and 10K marked for identification.)</p> <p>15 MR. FREIBERG: And, Chris, for the record</p> <p>16 what we have marked as Exhibit No. 6 is the 2006</p> <p>17 Annual Report and 10K. And then No. 8 is the 2008</p> <p>18 Annual Report and 10k. And both are for First</p> <p>19 Marblehead.</p> <p>20 (Exhibit No. 8, First Marblehead 2008</p> <p>21 Annual Report and 10K, marked for identification.)</p> <p>22 MR. FONTINELLI: Okay. Do you have bate</p> <p>23 numbers?</p> <p>24 MR. FREIBERG: No. These are -- were</p>	<p style="text-align: right;">Page 107</p> <p>1 A The report the annual financial report of</p> <p>2 the company.</p> <p>3 Q And is the Annual Report also published</p> <p>4 for purposes of people who are interested in</p> <p>5 purchasing the equity, the stock of a company?</p> <p>6 A Yes.</p> <p>7 Q And did you have any role in this</p> <p>8 particular 10K Annual Report?</p> <p>9 A Yes, I would have.</p> <p>10 Q Okay. And what was your role?</p> <p>11 A I was the chief financial officer at the</p> <p>12 time.</p> <p>13 Q And if you look at Page No. 94?</p> <p>14 A Yes.</p> <p>15 Q You amongst other officers of the</p> <p>16 corporation signed this document?</p> <p>17 A That's correct.</p> <p>18 Q For the purposes of filing it with the</p> <p>19 Securities Exchange Commission?</p> <p>20 A That's correct.</p> <p>21 Q In order to avoid a lot of back and forth</p> <p>22 between us, would it be fair to state that everyone</p> <p>23 in the Form 10K is true and correct to the best of</p> <p>24 your knowledge?</p>
<p style="text-align: right;">Page 106</p> <p>1 pulled off of the First Marblehead website. They</p> <p>2 weren't produced.</p> <p>3 MR. FONTINELLI: Thank you.</p> <p>4 THE COURT REPORTER: Should I hand the</p> <p>5 witness No. 8 also?</p> <p>6 MR. FREIBERG: Yes, why don't you -- I am</p> <p>7 going to just ask him to take a look at No. 8.</p> <p>8 MR. FIALKOW: Just No. 8? So you don't</p> <p>9 want him to look at No. 7?</p> <p>10 MR. FREIBERG: No.</p> <p>11 MR. FIALKOW: Okay.</p> <p>12 BY MR. FREIBERG:</p> <p>13 Q I'm obviously not going to ask you</p> <p>14 everything about that. But maybe you could just</p> <p>15 tell me what you are looking at there?</p> <p>16 A This is the First Marblehead Corporation</p> <p>17 Annual Report 2008 that is dated September 19th,</p> <p>18 2008.</p> <p>19 Q And just so everyone understands this is a</p> <p>20 report that is made available to shareholders?</p> <p>21 A Correct.</p> <p>22 Q And also attached to it is the Form 10K?</p> <p>23 A That is correct.</p> <p>24 Q And what is the Form 10K?</p>	<p style="text-align: right;">Page 108</p> <p>1 A Yes.</p> <p>2 Q And First Marblehead was under a duty to</p> <p>3 report things accurately and correctly to the</p> <p>4 Securities Exchange Commission?</p> <p>5 A Absolutely.</p> <p>6 Q And this particular Annual Report talks a</p> <p>7 lot about the effect of the TERI bankruptcy and the</p> <p>8 seizing of the credit markets that you were</p> <p>9 mentioning earlier?</p> <p>10 A Yes. The cover letter was a little trip</p> <p>11 down memory lane.</p> <p>12 Q The cover letter --</p> <p>13 A Dear stock holders. From Mr. Tora, the</p> <p>14 chairman of the board.</p> <p>15 Q You are referring to the third actual page</p> <p>16 of the --</p> <p>17 A That's correct. The shareholder's letter</p> <p>18 is typically written by the CEO. But in this case</p> <p>19 it was extraordinary because there was a replacement</p> <p>20 of the CEO and the return of Mr. Myers and departure</p> <p>21 of -- you know, it was quite an eventful period,</p> <p>22 let's just say.</p> <p>23 Q Yes. The cover letter you are talking</p> <p>24 about in the second paragraph it mentions the TERI</p>

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<p style="text-align: right;">Page 109</p> <p>1 bankruptcy?</p> <p>2 A That's correct.</p> <p>3 Q It says, and I will just quote, in April</p> <p>4 the Education Resources Institute Inc., TERI,</p> <p>5 filed a voluntary petition for reorganization under</p> <p>6 Chapter 11 of the United States Bankruptcy Code,</p> <p>7 which had an immediate negative impact on our</p> <p>8 business and client relationships.</p> <p>9 That's what we were talking about earlier.</p> <p>10 A That's what we were talking about before.</p> <p>11 Correct.</p> <p>12 Q Okay. If you could look at Page No. 2 of</p> <p>13 the --</p> <p>14 A The numbered Page No. 2?</p> <p>15 Q Yes.</p> <p>16 A Okay. Yes. There is a TERI bankruptcy</p> <p>17 note in the right margin? Is that the right page?</p> <p>18 MR. FIALKOW: This handwriting?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MR. FREIBERG: Off the record.</p> <p>21 (Discussion off the record.)</p> <p>22 BY MR. FREIBERG:</p> <p>23 Q The page that we were just looking at --</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 111</p> <p>1 TERI bankruptcy that had a very negative material</p> <p>2 impact on. And I can't parse out for you the value</p> <p>3 of each one of those. But in culmination or in</p> <p>4 totality you see the numbers there.</p> <p>5 Q I completely understand you can't parse</p> <p>6 out the numbers. But I guess to try to round this</p> <p>7 out would you agree that the TERI bankruptcy had a</p> <p>8 negative material impact on total revenues and net</p> <p>9 income for First Marblehead?</p> <p>10 A I would agree that. But when I look at</p> <p>11 the approximate number of student applications</p> <p>12 processed I saw an increase over 2007 to 2008, which</p> <p>13 really surprised me.</p> <p>14 Q Why does that surprise you?</p> <p>15 A Because with the TERI bankruptcy in April,</p> <p>16 you know, four or five months into the fiscal year,</p> <p>17 whatever it was -- or June, almost a full year in</p> <p>18 there is still an increase fairly -- a substantial</p> <p>19 increase in the number of applications processed.</p> <p>20 Q If you could turn to Page No. 76 of the</p> <p>21 document?</p> <p>22 A (Witness complies.) Okay. Thank you.</p> <p>23 Q This is a discussion of the residuals.</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 110</p> <p>1 Q -- it has, I guess, sort of a what I call</p> <p>2 a summary of revenue and income?</p> <p>3 A Correct.</p> <p>4 Q Is it correct that in 2007 the total</p> <p>5 revenues for the First Marblehead were \$880,704,000?</p> <p>6 A That's what it says, yes, sir.</p> <p>7 Q And the total revenues in 2008 were a loss</p> <p>8 of \$28,409,000?</p> <p>9 A Correct.</p> <p>10 Q And then the same numbers are there for</p> <p>11 net income?</p> <p>12 A Correct.</p> <p>13 Q Could you tell us in your own words how</p> <p>14 the TERI bankruptcy affected the total revenues and</p> <p>15 the net income?</p> <p>16 A Well, again, it's difficult to parse out</p> <p>17 who is responsible for what. But we saw again in</p> <p>18 the cover letter there is also a discussion about</p> <p>19 the investment from Goldman Sachs Capital Partners,</p> <p>20 GSCP, of some 190 or so million dollars which had</p> <p>21 been in the works for some period prior to that.</p> <p>22 So what this document unfortunately</p> <p>23 reflects very clearly is that over the period of</p> <p>24 that year there are a number of events including the</p>	<p style="text-align: right;">Page 112</p> <p>1 Q If you could just read through that real</p> <p>2 quick. I know you were --</p> <p>3 A Yes. Thank you. It will refresh me.</p> <p>4 (Witness complies.) Okay.</p> <p>5 Q So there is some financial information</p> <p>6 here about the value of the residuals that First</p> <p>7 Marblehead -- by the way, you may or may not be able</p> <p>8 to answer this. But was the residual interest that</p> <p>9 TERI and First Marblehead had in the trusts was it</p> <p>10 somehow divided up between First Marblehead and</p> <p>11 TERI?</p> <p>12 MR. FONTINELLI: Objection.</p> <p>13 THE WITNESS: Yes. As I said earlier, I</p> <p>14 didn't recall that there was the TERI residuals. So</p> <p>15 I don't recall specifically what the -- how it was</p> <p>16 divided. I just don't remember.</p> <p>17 BY MR. FREIBERG:</p> <p>18 Q So you can't tell us whether, for example,</p> <p>19 First Marblehead was granted -- and I am going to</p> <p>20 make some numbers up -- 100 percent of the residual</p> <p>21 but then assigned some of it to TERI?</p> <p>22 MR. FONTINELLI: Objection.</p> <p>23 THE WITNESS: I vaguely remember that</p> <p>24 there was some formula for that but I don't remember</p>

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<p style="text-align: right;">Page 113</p> <p>1 what that was. Like you said that --</p> <p>2 BY MR. FREIBERG:</p> <p>3 Q Some formula for the division?</p> <p>4 A Correct.</p> <p>5 Q And, again, and after -- the division of</p> <p>6 the residual interest between First Marblehead and</p> <p>7 TERI?</p> <p>8 A That's correct.</p> <p>9 Q But you do recall there was some mechanism</p> <p>10 by which it was --</p> <p>11 A As you were describing that example I</p> <p>12 would say that there was some -- there had to be</p> <p>13 some formula in order for TERI to report valuation</p> <p>14 of residual and First Marblehead to also report some</p> <p>15 valuation of the residual. So there is clearly</p> <p>16 something there.</p> <p>17 Q Okay.</p> <p>18 A I just don't recall what it was.</p> <p>19 Q Okay. And the value of the residuals that</p> <p>20 First Marblehead had changed dramatically as a</p> <p>21 result -- in 2008?</p> <p>22 A Yes.</p> <p>23 Q And the change was \$584,000,000 decrease</p> <p>24 in the value; is that fair to state?</p>	<p style="text-align: right;">Page 115</p> <p>1 private level trust.</p> <p>2 So when I read through this I remembered</p> <p>3 quickly it was an awful lot and many moving parts,</p> <p>4 including the valuation of the TERI guaranty. But</p> <p>5 there was nothing disclosed here saying, that I</p> <p>6 read, that said that at that time we believed that</p> <p>7 the TERI bankruptcy was a material driver of the</p> <p>8 reduction in the residual value.</p> <p>9 Q But it had some --</p> <p>10 A Yes.</p> <p>11 Q -- some effect. It was --</p> <p>12 A Yes.</p> <p>13 Q -- some driver, so to speak?</p> <p>14 MR. FONTINELLI: Objection.</p> <p>15 THE WITNESS: Absolutely.</p> <p>16 BY MR. FREIBERG:</p> <p>17 Q To use your words.</p> <p>18 A Yes.</p> <p>19 Q Rather than going through all of the pages</p> <p>20 of these 10K's would it be fair to state that these</p> <p>21 documents, the 10K's and the Annual Reports are</p> <p>22 business records of First Marblehead?</p> <p>23 MR. FIALKOW: Objection.</p> <p>24 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 114</p> <p>1 A Based on the numbers, yes.</p> <p>2 Q And the TERI bankruptcy had some effect on</p> <p>3 that?</p> <p>4 A Yes.</p> <p>5 Q Would you consider that to be a material</p> <p>6 effect?</p> <p>7 A Well, as I read through here the -- there</p> <p>8 were -- the way to think about this when you are</p> <p>9 reporting on an annual basis that there were</p> <p>10 residuals which we had booked previously and then</p> <p>11 had to market for that particular period.</p> <p>12 And then there were the residuals that</p> <p>13 were booked as a result of new transaction. And for</p> <p>14 each one of those there were assumptions made,</p> <p>15 again, mostly done by the work of the accountants,</p> <p>16 and with the data about what the performance was in</p> <p>17 the trust, what the appropriate discount rate would</p> <p>18 be for those residuals.</p> <p>19 So as I read this it refreshed me that</p> <p>20 there were significant material changes in the way</p> <p>21 those computations were done as a result of the</p> <p>22 change in the market and the issuance of the -- it</p> <p>23 says here, these triple B rated securitization --</p> <p>24 I'm sorry -- the triple B rated securities in the</p>	<p style="text-align: right;">Page 116</p> <p>1 BY MR. FREIBERG:</p> <p>2 Q Were they prepared in the regular course</p> <p>3 of business --</p> <p>4 A Yes.</p> <p>5 Q -- of First Marblehead Corporation?</p> <p>6 A Yes.</p> <p>7 Q And were the people who were writing and</p> <p>8 recording the information in the 2006 and 2008 10K's</p> <p>9 and annual reports were they required to write and</p> <p>10 record that information in a truthful and accurate</p> <p>11 manner?</p> <p>12 A Yes.</p> <p>13 Q And were they required to report that</p> <p>14 information -- record that information at or near</p> <p>15 the time that the information was gathered?</p> <p>16 A Yes.</p> <p>17 Q And you would agree that these are</p> <p>18 business records of the company?</p> <p>19 A Yes.</p> <p>20 Q A couple final questions. Did the First</p> <p>21 Marblehead Corporation profit in anyway from the</p> <p>22 TERI guaranty?</p> <p>23 A It profited as we started as a result of</p> <p>24 the TERI guaranty being available, being respected</p>

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<p style="text-align: right;">Page 117</p> <p>1 by the rating agencies and by investors. And it</p> <p>2 allowed First Marblehead to have a business model</p> <p>3 that resulted in both, as you saw in the financial</p> <p>4 statements, the upfront advisory fees and residuals</p> <p>5 over time. So, yes, I would say it was a factor in</p> <p>6 the profit of the company.</p> <p>7 Q Was it a -- and I hate to beat a dead</p> <p>8 horse. Was it a significant factor in the profit of</p> <p>9 the company?</p> <p>10 MR. FONTINELLI: Objection.</p> <p>11 THE WITNESS: I think it was. Again, in</p> <p>12 the same context as we have been talking about</p> <p>13 material significance before. Yes, I think it was.</p> <p>14 You know, Mr. Torin, in this cover letter again, you</p> <p>15 know, he said and we said here that the filing had a</p> <p>16 significant negative impact on the estimated fair</p> <p>17 value of the receivables, which was one of the</p> <p>18 drivers of the profitability of the company.</p> <p>19 BY MR. FREIBERG:</p> <p>20 Q Okay. Did the bond holders, those</p> <p>21 institutional investors who purchased the asset</p> <p>22 backed securities from the trusts, did they in any</p> <p>23 way profit from TERI's activities?</p> <p>24 MR. FONTINELLI: Objection.</p>	<p style="text-align: right;">Page 119</p> <p>1 Freiberg.</p> <p>2 MR. FIALKOW: Any questions on the phone?</p> <p>3 MR. FONTINELLI: Yes. Could we just take</p> <p>4 a 5 minute quick break? Let me take a quick look at</p> <p>5 my notes?</p> <p>6 MR. FREIBERG: That's fine.</p> <p>7 MR. FIALKOW: Sure.</p> <p>8 (Recess.)</p> <p>9 BY MR. FONTINELLI:</p> <p>10 Q Mr. Hupalo, thank you for your time. I</p> <p>11 just have a quick question. I think you testified</p> <p>12 something along the lines that you thought the bond</p> <p>13 holders would be third party beneficiaries of the</p> <p>14 guaranty; is that right?</p> <p>15 A That's correct.</p> <p>16 Q Okay. Were you making that as a legal</p> <p>17 conclusion?</p> <p>18 A No. I was making it as a capital markets</p> <p>19 professional and knowing what bond holders -- one</p> <p>20 of -- I have said a number of times during the</p> <p>21 course of the afternoon that bond holders would take</p> <p>22 into account several factors when they were</p> <p>23 considering purchase of a security. And one of</p> <p>24 those was the TERI guaranty, and we went through the</p>
<p style="text-align: right;">Page 118</p> <p>1 THE WITNESS: When you say profit what</p> <p>2 context do you mean?</p> <p>3 BY MR. FREIBERG:</p> <p>4 Q Let me ask it a little differently. Did</p> <p>5 the bondholders, those investors that purchased the</p> <p>6 asset backed securities, did they benefit in anyway</p> <p>7 from the TERI guaranty?</p> <p>8 MR. FONTINELLI: Objection.</p> <p>9 THE WITNESS: I would say they were</p> <p>10 beneficiaries of the guaranty.</p> <p>11 BY MR. FREIBERG:</p> <p>12 Q I'm sorry. They were --</p> <p>13 A They were beneficiaries of the guaranty.</p> <p>14 Q And how so?</p> <p>15 A Because of the guaranty by its very nature</p> <p>16 and the reserve fund that was pledged to the deal</p> <p>17 to, as we saw before in the credit enhancement, it</p> <p>18 is one of the factors that they would have</p> <p>19 considered.</p> <p>20 MR. FREIBERG: Sir, I have no further</p> <p>21 questions for you. But I do again want to thank you</p> <p>22 for your time here today. It's been a pleasure</p> <p>23 meeting you.</p> <p>24 THE WITNESS: You are welcome, Mr.</p>	<p style="text-align: right;">Page 120</p> <p>1 documents and saw credit enhancement. And as a</p> <p>2 result of that, sir, I said that I thought they were</p> <p>3 beneficiaries of the guaranty.</p> <p>4 Q Okay. And you are not a trained lawyer;</p> <p>5 right?</p> <p>6 A That's correct.</p> <p>7 MR. FONTINELLI: Okay. I don't have any</p> <p>8 further questions.</p> <p>9</p> <p>10 (Deposition concluded at 3:38 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1	ESQUIRE ERRATA SHEET	1	DEPOSITION ERRATA SHEET
2	Esquire Job ID: J4674329	2	Page No. _____ Line No. _____ Change to: _____
3	Case Caption: Golden vs. Nat'l Collegiate	3	_____
4	Student Loan Trust	4	Reason for change: _____
5		5	Page No. _____ Line No. _____ Change to: _____
6		6	_____
7	DECLARATION UNDER PENALTY OF PERJURY	7	Reason for change: _____
8	I declare under penalty of perjury that I	8	Page No. _____ Line No. _____ Change to: _____
9	have Read the entire transcript of my	9	_____
10	Deposition taken in the above-captioned matter	10	Reason for change: _____
11	or the same has been read to me and the same is	11	Page No. _____ Line No. _____ Change to: _____
12	true and accurate, save and except for changes	12	_____
13	and/or corrections, if any, as indicated by me	13	Reason for change: _____
14	on the DEPOSITION ESQUIRE ERRATA SHEET hereof,	14	Page No. _____ Line No. _____ Change to: _____
15	with the understanding that I offer these	15	_____
16	changes as if still under oath. Signed on the	16	Reason for change: _____
17	_____ day of _____, 2018.	17	Page No. _____ Line No. _____ Change to: _____
18		18	_____
19	_____	19	Reason for change: _____
20	JOHN HUPALO	20	Page No. _____ Line No. _____ Change to: _____
21		21	_____
22		22	Reason for change: _____
23		23	SIGNATURE: _____ DATE: _____
24		24	JOHN HUPALO
Page 122		Page 124	
1	DEPOSITION ERRATA SHEET	1	C E R T I F I C A T E
2	Page No. _____ Line No. _____ Change to: _____	2	COMMONWEALTH OF MASSACHUSETTS
3	_____	3	SUFFOLK, SS.
4	Reason for change: _____	4	I, Laura Naylor, a Notary Public duly qualified
5	Page No. _____ Line No. _____ Change to: _____	5	in and for the Commonwealth of Massachusetts, do
6	_____	6	hereby certify that:
7	Reason for change: _____	7	JOHN HUPALO, the witness whose testimony is
8	Page No. _____ Line No. _____ Change to: _____	8	hereinbefore set forth, was duly sworn by me, and
9	_____	9	that such testimony is a true and correct
10	Reason for change: _____	10	transcription of my original stenographic notes
11	Page No. _____ Line No. _____ Change to: _____	11	taken in the foregoing matter, to the best of my
12	_____	12	knowledge, skill and ability.
13	Reason for change: _____	13	I further certify that I am neither attorney or
14	Page No. _____ Line No. _____ Change to: _____	14	counsel for, nor related to or employed by any of
15	_____	15	the parties to the action in which this deposition
16	Reason for change: _____	16	is taken; and furthermore, that I am not a relative
17	Page No. _____ Line No. _____ Change to: _____	17	or employee of any attorney or counsel employed by
18	_____	18	the parties thereto or financially interested in the
19	Reason for change: _____	19	action.
20	Page No. _____ Line No. _____ Change to: _____	20	IN WITNESS WHEREOF, I have hereunto set my hand
21	_____	21	and affixed my Notarial seal this 7th day of
22	Reason for change: _____	22	December 2019. <i>Laura Naylor</i>
23	SIGNATURE: _____ DATE: _____	23	Laura Naylor
24	JOHN HUPALO	24	Notary Public
			My Commission Expires: April 12, 2022
			THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES
			NOT APPLY TO ANY REPRODUCTION AND/OR DISTRIBUTION OF
			THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT
			CONTROL AND/OR SUPERVISION OF THE CERTIFYING COURT
			REPORTER.